Understanding Usul Al-Fiqh

(Principles of Islamic Jurisprudence)

فهم فی اصول الفقه

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Translation of the Qur'an

It should be perfectly clear that the Qur'an is only authentic in its original language, Arabic. Since perfect translation of the Qur'an is impossible, we have used the translation of the meaning of the Qur'an throughout the book, as the result is only a crude meaning of the Arabic text.

Qur'anic verses appear in speech marks proceeded by a reference to the Surah and verse number. Sayings (Hadith) of Prophet Muhammad (saw) appear in **bold**.

(saw) - صلى الله عليه وسلم (Peace be upon him)
(swt) - سبحانه وتعالى
AH – After Hijra
CE – Christian Era

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بِسْمِ اللهِ الرَّحمَنِ الرَحيم

Introduction to this edition

Various books on Usul al-Fiqh are available in English, however after reviewing them it becomes clear that most are written for academic purposes rather than for the normal reader. In this regard the excellent book written by Abu Tariq Hilal entitled 'Studies in Usul al-Fiqh' stands out. It was written in a clear simple style understandable to the average reader.

I have slightly restructured the book so that the definitive sources of law are discussed before those upon which there is disagreement amongst the scholars. The chapters on the Quran, Qiyas, Ijtihad and Taqleed were brief in the original. I have added to these and in some cases rewritten sections where elaboration was required. In this age of doubt and scepticism I felt it necessary to add some textual evidences and much needed references for some definitions and Ahadith. To distinguish this amended version from the original a new title has been given that keeps to the simplicity of the original.

It is clear that in writing the original, Abu Tariq referred to Sheikh Taqiuddin an-Nabhani's (ra) masterpiece 'Shaksiyyah Islamiyyah' (The Islamic Personality). I have done the same, as well as referring to the excellent book 'Teyseer al wusool Ila al-Usul' (To make understanding Usul easy) by Sheikh Ata ibn Khalil Abu al-Rishta (May Allah protect him).

I would like to thank Sheikh Abu Omar al-Khazraji for his support and checking of the book, Maulana Umar Farooq Nadwi for reviewing it, Qari Fazlul Karim for helping with the Arabic as well as my wife, Shifaa for her valuable input and support.

Abu Ismael al-Beirawi
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Introduction

الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتْمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ الْإِسْلَامَ دِينًا

"Today have I perfected your Deen, completed my favour upon you, And have chosen for you Islam as your Deen." (TMQ Al-Ma'ida: 3)

In this Ayah, as well as many others, Allah (swt) reminds the Muslim Ummah of the value and regard that He has for the message of Islam. This message is unique in comparison to the previous messages in several ways.

It is the last and final message for humanity from Allah. The followers of this message have the honour of implementing and carrying it to other nations without the presence of their Messenger Muhammad (saw).

In contrast, their respective Prophet or Messenger led the Ummahs before the Message of Muhammad (saw). This honour manifests itself in Allah's (swt) promise that the Muslim Ummah would be the first to enter Paradise. Therefore, the people who have entered this Deen are truly the fortunate ones.

The Muslim Ummah earned this honour by realising the necessity of implementing and maintaining Islam. They were its guardians even when they were under the brutal occupation of Mongols. In fact, during the occupation they were able to dramatically influence the occupiers with the Islamic ideology. This unprecedented event exemplifies the trust and the clear-cut understanding of Islam that Muslims possessed. What other nation was able to influence and change its conquerors, such that they would start carrying the Deen of the conquered?

It is with a feeling of regret and sorrow that today we witness Muslims, either leaving or only partially accepting Islam. Muslims have tried to mix its thoughts and values with that of other ideologies. Its laws are partially implemented along with those of other ideologies. Islam for the most part is generally known by its rituals to its followers and thus they convey it to other nations as such.

However, this Deen is still alive and intact in the Qur'an and Sunnah. It is from these two sources that we will explain the nature of Islam and fundamental elements associated with its foundation of law (Usul al-Fiqh), Insha'Allah.

Islam was not revealed all at once, and is not just a set of "do's" and "don'ts" like any constitution or legal document. In contrast, Islam offered solutions to the day-to-day problems as they were encountered by the Prophet (saw) and the Sahabah (ra)

Islam provided a definite and clear vision to the Prophet (saw) on how to live up to its ideology. Islam did not only provide and explain its values and thoughts; moreover, it provides a comprehensive set of legal laws regarding all facets of human existence. The implementation of these laws brought unheralded tranquillity and justice in the society.

In essence, Islam can be defined as a composition of unique and unparalleled ideas, values, thoughts, guidelines, and laws which Prophet Muhammad (saw) expressed or applied during his (saw) life.

The 'Aqeedah of Islam surpasses the "'Aqeedah" of capitalism / democracy, in that it makes the human being subservient to his Creator rather than to his own desires. The simplicity of Islam frees the human being from the slavery to anything other than Allah (swt). The 'Aqeedah of Islam orients a person's thinking to seek the pleasure of Allah (swt) as opposed to self-benefit and material pleasure.

The laws of Islam are of the same nature as its 'Aqeedah, in that they are both revealed by Allah (swt). The laws neither favour the working nor the elite class in the society. These are qualities of man-made laws, which the Shari'ah transcends. Consequently, no Muslim, whether rich or poor, would feel any hesitation or regret in implementing the Islamic laws.

However, presently, hesitation and scepticism are prevalent at the Ummah level. We will examine and reflect on one of the major causes of such a decadent attitude, i.e. the lack of cohesive understanding of issues surrounding Fiqh (Islamic Laws).

It is with this purpose of developing a cohesive understanding of Usul al-Fiqh that we have put forward this effort.

Basic Terms in Islamic Jurisprudence

1.1 Fiqh

Linguistically, Fiqh means understanding (Fahm), as in the saying of Allah (swt):

مَا نَفْقَهُ كَثِيرًا مِمَّا تَقُولُ

"We do not comprehend (ma nafqahu) much of what you say." (TMQ Hud: 91) i.e. we do not understand.

As a juristic term, Fiqh has two meanings:

A. The Usuli scholars such as Amidi, al-Zarkashi, al-Baydawi and Shawkani have defined fiqh as, **'the knowledge of the practical Shar'ai matters that are derived from their elaborated evidences (al-ad'Illah al-tafsiliyyah)'**.[1]

   As an example, a Faqih would know the ruling for the issue of abortion; in addition, he would know how and from where this ruling was extracted from.

B. All the Islamic laws. This definition is synonymous to the term Shari'ah.

Knowing the Shari'ah rules with which a Muslim is obliged with in life is an individual duty upon every Muslim, as he is commanded to undertake all his actions according to the laws revealed by his creator, Allah (swt). This is because the address of accountability (Takleef) with which the Legislator (Ash-Shar'i) addressed mankind, and addressed believers, is a decisive address to anyone

[1] Amidi, Ihkam, I, 6; Shawkani, Irshad, p. 3; al-Zarkashi, al Bahr al Muhit fi Usul ul Fiqh Vol 1, p.21; al-Baydawi, Minhaj al wusul ila ilm al usul, p. 3

whether it was about the creed (Iman) or human actions. Allah's (swt) says:

وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا

"It is not for any believer, male or female, to have any option in any matter upon which Allah and His Messenger have judged." (TMQ Al-Ahzab: 36)

فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ (7) وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ (8)

"Whoever performs a particle's weight of good will see it, and whoever performs a particle's weight of evil will see it." (TMQ Al-Zalzalah: 7-8)

يَوْمَ تَجِدُ كُلُّ نَفْسٍ مَا عَمِلَتْ مِنْ خَيْرٍ مُحْضَرًا وَمَا عَمِلَتْ مِنْ سُوءٍ تَوَدُّ لَوْ أَنَّ بَيْنَهَا وَبَيْنَهُ أَمَدًا بَعِيدًا وَيُحَذِّرُكُمُ اللَّهُ نَفْسَهُ وَاللَّهُ رَءُوفٌ بِالْعِبَادِ

"The Day that every soul will be confronted with all the good it has done and all the evil it has done, it will wish that there was a great distance between it and (its evil). But Allah cautions you about Himself." (TMQ Al-Imran: 30)

كُلُّ نَفْسٍ تُجَادِلُ عَنْ نَفْسِهَا

"And each soul will be recompensed for all its actions." (TMQ An-Nahl:111)

Accountability (Takleef) has come in a decisive manner in the texts, so a Muslim is accountable to restrict himself to the Shar'a rules when he undertakes any action. Consequentially it becomes obligatory upon every Muslim to know the Shari'ah rules with

which he is bound by in this life. As for gaining further knowledge in other areas of the Shari'ah this is a collective obligation (Fard ul Kifaya) not an individual duty (Fard ul Ayn) i.e. if some people fulfil this, then the obligation is lifted from the rest.

This is strengthened by what was narrated by Anas bin Malik who said: The Messenger of Allah (saw) said:

«طلب العلم فريضة على كل مسلم»

"Seeking knowledge is obligatory upon every Muslim."(Ibn Majah)

Jurisprudence (Fiqh) is part of the rules with which a Muslim is bound by in his life such as ritual worships ('Ibadat) and social transactions (Mu'amalat). Hence studying Fiqh is among the compulsory matters for Muslims. There are noble Ahadith encouraging the studying of fiqh.

It is narrated from Mu'awiyya bin Abu Sufyan that the Messenger of Allah (saw) said:

«من يرد الله به خيراً يفقهه في الدين»

"The one for whom Allah wills good, He grants him fiqh in the deen." (Bukhari)

Also Hazzam bin Hakeem narrated from his uncle from the Messenger of Allah (saw) who said:

« إنكم أصبحتم في زمان كثير فقهاؤه قليل خطباؤه قليل سائلوه كثير معطوه، العمل فيه خير من العلم، وسيأتي على الناس زمان قليل فقهاؤه كثير خطباؤه قليل معطوه كثير سائلوه، العلم فيه خير من العمل »

"You are in a time of many jurisprudents (fuqaha), few speakers, many who give and few who ask; so action in this time is better than knowledge. There will soon come a time of few jurisprudents, many speakers, many who beg and few who give; so knowledge in this time is better than action."

These ahadith are explicit in the virtue of fiqh and encouraging its study. It was narrated that Umar bin al-Khattab said:

«لموت ألف عابد قائم الليل صائم النهار أهون من موت العاقل البصير بحلال الله وحرامه»

"The death of one thousand worshippers who pray at night and worships in the day is less serious than the death of one intelligent knower (Baseer) of the halal and haram of Allah." (Ahmad)

1.2 Usul al-Fiqh

Usul al-Fiqh is the collection of principles pertaining to the methodology for the extraction of Fiqh. Ibn al-Hajib defined it as, **'the principles by which the mujtahid derives the legal rules of conduct from the specific evidences'**.[2]

The concept of Usul al-Fiqh is comparable to adhering to the methodology when conducting a scientific experiment. Similarly, adhering to the methodology in deriving Fiqh (rulings) is referred to as Usul al-Fiqh. This methodology provides a way for a person to derive Islamic rulings from the legislative sources in Islam.

The collections of principles related to Usul al-Fiqh are many. A few examples of these rules are discussed in the following section.

A. Legislative Sources:

[2] Ibn al-Hajib, Mukhtasar al-Muntaha, Vol 1, p. 4

Adopting specific sources to derive laws is a major subject in Usul al-Fiqh. The Qur'an, Sunnah, Ijma' as-Sahabah (consensus of the companions) and Qiyas (analogical deduction) are four sources in Islam, which are accepted by almost all of the scholars. However, there are other additional sources such as Maslahah al Mursalah (public interests) or Ijma' al Ummah (consensus of the Ummah), which are not widely accepted.

B. Arabic Language:

Within the Arabic language, there are rules for understanding the structure of an Ayah or a Hadith. The rules of grammar in the Arabic language define the meaning of the Ayah or Hadith. Therefore, understanding the rules of grammar and their application is one use of the Arabic language in Usul al-Fiqh.

C. Interpreting the text of Qur'an and Sunnah:

Unless the text of the Qur'an and Sunnah is correctly understood, no ruling can be deduced from it. The linguistic structure of the text in Qur'an and Sunnah varies from one style to another. Some examples of these linguistic styles are: Dhanni (speculative text), Qata'i (definitive text), 'Aam (general text), Khass (specific text), Haqiqi (literal text), and Majaazi (metaphorical text). The rules to distinguish and differentiate between these styles are an important subject in Usul al-Fiqh.

Another essential aspect involved in interpreting the text of the Qur'an and Sunnah are issues surrounding abrogation of rulings from the Qur'an and Sunnah. The study of abrogation involves issues such as, what constitutes abrogation, how to understand it in relation to other Ayahs or Ahadith, and how to reconcile these differences.

Some Muslims claim there is no need for Usul al-Fiqh, thinking one can directly go to the text of the Qur'an and Sunnah and derive laws. Such a claim really illustrates ignorance in understanding

Islam. It is impossible to derive laws without being equipped with the necessary tools. These tools enable us to understand the text of the Qur'an and Sunnah, and without understanding the text; one would not be able to extract laws.

As an example, without being aware of the rules of Arabic grammar for interpreting the text of Qur'an and Sunnah, one would not be able to differentiate whether the command in the Ayah or Hadith for a certain action is Haram (forbidden) or Makruh (undesirable). Therefore, Usul al-Fiqh is a definite pre-requisite to derive rulings.

Since rulings are derived based on Usul al-Fiqh, a variation in Usul al-Fiqh may result in different rulings. This is one of the reasons that there might exist more than one ruling on some issues.

The end product of Usul al-Fiqh is Shari'ah (or Fiqh). The difference between Usul al-Fiqh and Shari'ah is that the latter is concerned with the rulings related to our actions, and Usul al-Fiqh is concerned with the methodology applied to deduce such rulings.

1.3 Shari'ah

The linguistic meaning of the word Shari'ah is a non-exhaustive source of water with which people satisfy their thirst. Thus, the linguistic significance of Shari'ah is that the Islamic laws are effectively a source of guidance. As water is the fundamental basis of life, the Islamic laws are an essential source for guiding human life.

Shari'ah is composed of all the laws derived from the legislative sources of Islam. These laws are not just limited to areas covering marriage or divorce; rather, the Islamic laws cover every action performed by an individual or a society. The term Shari'ah is also a synonym for Fiqh.

1.4 Hukm Shara'i

The text of both the Qur'an and Sunnah address many topics such as, stories of previous nations, the Day of Judgment, and others. However, the text, which specifically addresses our actions of what to do or what not to do, is referred to as Hukm Shar'i.

The term Hukm Shar'i, in Arabic, means the address of the Legislator related to our actions. Islam addresses all of our actions, whether they are permitted or not. Accordingly, all of our actions have to be guided by the Hukm Shar'i. Allah (swt) says:

وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ

"Whoso rules not according to what Allah has sent down they are the transgressors." (TMQ Al-Maidah: 45)

وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ ضَلَالًا مُبِينًا

"It is not for any believing man or woman, when Allah and His Messenger have decided a matter, to have any choice for themselves in their affairs. For whoever rebels against Allah and His Messenger has gone astray into manifest error." (TMQ Al-Ahzab: 36)

1.5 Types of Hukm Shara'i

Many Muslims are too quick to conclude that something is either Haram (prohibited) or Fard (compulsory) after a quick reading of an Ayah or a Hadith. Not all commands in the legislative sources are Fard or Haram. The rules, which are used to differentiate the types of Hukm Shar'i, are again related to Usul al-Fiqh.
In reality, the Hukm Shar'i can be understood in five general ways.

A. Fard (Compulsory):

If the request to do an action is decisive (Talab Jazim) then it is a Fard or Wajib; both have the same meaning. A person who complies with a Fard will be rewarded, while one who disobeys will be punished.
Example: Performing and establishing Salah, paying Zakah, participating in the Jihad, being ruled by Islam, Muslim women wearing Hijab etc.

B. Haram (Prohibited)
If the instruction is connected with a decisive command of refraining from an action then it is Haram or Mahdhur. If the Haram is committed, then the person will be punished, but if the Haram action is avoided, the person will be rewarded.

Example: dealing with Riba, gambling, promoting nationalism or democracy, etc.

C. Mandub, Mustahab, Sunnah or Nafilah (Recommended)
If the instruction to do an action is not firm, then it is considered Mandub. The one who performs it is praised and rewarded; however, the one who did not perform it is neither blamed nor punished.

Example: Attending to the sick, giving alms to the poor, fasting Mondays and Thursdays.

D. Makruh (Disliked)
If the instruction of refraining from an action is not firm, then it is considered Makruh. The one who abstains is praised and rewarded while the one who does it is neither punished nor blamed.

Example: performing Salah between Fajr Salah and sunrise, eating galic before going to the masjid for Salah, dropping litter on the road etc.

E. Mubah (Permissible)

If the choice to do or not to do an action is left up to the person, then the action is called Mubah. One will neither be rewarded nor punished for an action falling under this category.
Example: Eating lamb or chicken, marrying up to four wives, driving a car etc.

Some of the Hukm Shar'i such as Fard are divided into sub-categories. For example, Fard is divided into Fard al Ayn and Fard al Kifaya. Fard al Ayn is obligatory on every Muslim, such as praying five times a day; fasting Ramadhan, fulfilling duties to husband/wife whereas, Fard al Kifaya is obligatory on the whole Ummah until part of the Ummah fulfils the Fard, such as the burial of a deceased Muslim. If a portion of the Ummah fulfilled this task, then this relieves the duty from the rest of the Muslims. Some of the other types of Hukm Shar'i are also further sub-divided.

1.6 The Application of Shar'iah

The Shari'ah is not only limited to areas covering divorce or marriage. It covers Man's relationship with Allah (swt), with himself, and other people. In addition, to the method for applying these rules, implementing any rule requires having the knowledge of the situation, the rule and the method.
As an example, there is a general principle in Islam that a thief's hand should be cut off. However, if the individual steals food while hungry then this general principle is not applied in this particular situation. Hence, it is obligatory to have the knowledge of how and when to apply a rule.

A misapplication of the Shari'ah is applying the Islamic laws related to Hudud (punishment) while at the same time implementing an economic system based on capitalism. Islamic laws related to punishment were revealed to protect the society in which Islam is being applied. How can the Islamic laws related to punishment be applied concurrently with capitalism, which thrives on exploiting the masses? How can anyone justify the Islamic punishment of

cutting the hand of a thief while the thief is under the oppression of capitalism?

The punishment of cutting off the hand of the thief is based upon protecting the society where the Islamic system is in application, a system which functions to see to it that the basic needs of every individual in the State are met.

The Shari'ah should not be viewed as a burden or an obstacle in our lives; but rather, as a mercy from Allah (swt). These laws must be understood as part of the Deen (a comprehensive way of life) revealed by the Creator. This Deen requires a conviction that Islam is the only solution to our problems; it came from Allah (swt), who created us and thus knows what is best for us.

There is no reason for us not to obey any ruling from Allah (swt). As mentioned earlier, we follow the Islamic laws just because they are from Allah (swt), in contrast to the oppressive man-made laws. Consequently, we should feel proud, happy, and grateful that Allah (swt) has shown us the only correct way to obey Him (swt).

Islam is a complete and thoroughly integrated unit that cannot be implemented partially. The implementation of the Islamic rules related to the economy necessitates the implementation of the rules of Zakah, Nafaqah, and Al-Jizyah, which in turn means the implementation of the economic system.

The execution of the economic system requires the implementation of the "Ibadah, social system, rules related to the People of the Book, Islamic foreign policy, and rules related to the Khaleefah all together. The Islamic system is inter-connected; one part helps the implementation of the other part.

Implementing only parts of Islam and leaving others results in chaos is evident today. For instance, Allah (swt) has permitted divorce to solve a problem, but today divorce itself is a problem

rather than a solution due to the misapplication of this particular solution and Islam in general.

Daleel

Linguistically, Daleel means a proof, indication, or evidence. As a term, Daleel means the source or evidence for a thought, concept, or a ruling. Any law or ruling must have a Daleel, which can be from Qur'an, Sunnah, or a source, which Qur'an and Sunnah directed us to adopt. These sources will be discussed later in the book. Any ruling from the text of either the Qur'an or Sunnah is considered a Daleel. For example, the Qur'an states:

وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَئِكَ هُمُ الْمُفْلِحُونَ

"Let there arise out of you a group of people inviting to all that is good (Islam) and enjoining what is right and forbidding what is wrong." (TMQ Al-Imran: 104)

This Ayah is considered a Daleel for the obligation of establishing a Hizb (party or group) calling for Islam and enjoining what is M'aruf (good) and forbidding what is Munkar (bad).

An example of a Daleel from the Sunnah is the prohibition to the call for nationalism. The Prophet (saw) said about all types of 'Asabiyah (nationalism, racism, tribalism):

«دَعُوهَا فَإِنَّهَا مُنْتِنَةٌ»

"Leave it, it is rotten." (Bukhari & Muslim)

2.1 Structure of Daleel

As mentioned earlier, a Daleel is an evidence for an opinion, concept, ruling, or a thought from Islam. There are two aspects related to any Daleel, Riwayah (reportage) and Dalalah (meaning).

The Riwayah covers issues related to how the information was relayed to us, which includes the number and the integrity of its reporters.

The Dalalah is related to the meaning of the text in the Daleel. There are also two terms used in connection with Riwayah and Dalalah; Qata'i and Dhanni.

Qata'i is defined as being conclusive or decisive, while Dhanni is the opposite of Qata'i and means non-definite, speculative or indecisive.

2.1.1 Riwayah

Any Ayah from the Qur'an or Hadith Mutawatir is considered Qata'i (conclusive) in its Riwayah (report).

The Qata'i in Riwayah implies that the evidence is authentic without any shadow of doubt. This authenticity is established based on the methodology of transmission.

The methodology by which the Qur'an was transmitted to us precludes any possibility of fabrication. The report was transmitted generation by generation in exactly the same manner. It is impossible for an entire generation to fabricate, erase, or add contents to the Qur'an. It is inconceivable to believe that every single individual in that generation assembled together and agreed to add or delete parts of the Qur'an. Everyone in that generation was reciting the same contents of the Qur'an, thus authentifying its contents.

Hadith Mutawatir was not transmitted generation-by-generation, but rather by a large number of people. Due to the large number of people reporting the Daleel, and their diversity of residence, their established reliability and conviction, it is inconceivable that this Daleel could be wrong. Any report of information other than through the Qur'an or Hadith Mutawatir, such as Hadith Ahad, is

considered Dhanni (non-definite), meaning that there is a minute possibility that the Daleel could contain error. To summarise:

Riwayah	
Qata'i (قطعـى) (Conclusive)	Dhanni (ظنـي) (Non-Definite)
1. Qur'an	1. Hadith Ahad
2. Hadith Mutawatir E.g. "Whosoever lies about me deliberately, let him take his place in the Hell fire."	E.g. "Leave it, it is rotten". (Refers to all forms of Asabiyah, racism. Bukhari & Muslim).

2.1.2 Dalalah

The second aspect of the Daleel is the Dalalah (meaning). If the text of Qur'an, Hadith Mutawatir or Hadith Ahad is clear, specific, and has only one meaning, then it is considered Qata'i. The text of a Qata'i Daleel has to have only one meaning and cannot be open to any other interpretation. If the text is open to more than one interpretation, then it is considered Dhanni. Since interpretations are due to the Arabic language, any interpretation has to be justified through the Arabic language. To summarise:

Dalalah	
Qata'i (Conclusive)	**Dhanni (Non-definite)**
A1. Qur'an (One meaning)	B1. Qur'an (More than one meaning)
A2. Hadith Mutawatir (One meaning)	B2. Hadith Mutawatir (More than one meaning)
A3. Ahad Hadith (One meaning)	B3. Ahad Hadith (More than one meaning)

A1. Example of Qur'an with a Qata'i (conclusive) meaning:

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ الرُّبُعُ مِمَّا تَرَكْنَ

"What your wives leave, your share is a half, if they leave no child". (TMQ An-Nisa: 12)

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ

"Those who accuse chaste woman of zina (adultery) and fail to bring four witnesses (to prove it) flog them eighty stripes." (TMQ An-Nur: 4)

The quantitative aspect of these rulings, namely one half and eighty are clear and therefore cannot be open to any other interpretations.

A2. Example of Hadith Mutawatir with Qata'i (conclusive) meaning:

«من كذب عليّ متعمداً فليتبوأ مقعده من النار»

"Whosoever lies about me (Prophet Muhammad saw) deliberately let him take his place in the hell-fire." (Bukhari & Muslim)

This Mutawatir Hadith is very clear in its subject; thus there is only one understanding from the text that whoever lies about what Prophet (saw) said, intentionally, he will go to hell-fire.

A3. Example of Hadith Ahad with Qata'i (conclusive) meaning:

It is reported from a non-Mutawatir Hadith that the Prophet (saw) fasted 6 days in Shawwal. The conclusive meanings from this Hadith are the following:

a) Permissibility of fasting 6 days in Shawwal.
b) Except on the first day of Shawwal, since it is the day of Eid, and it is Haram to fast on Eid.

B1. Example of Quranic Ayah with a Dhanniy (non-definite) meaning:

Allah (swt) says:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ وَامْسَحُوا بِرُءُوسِكُمْ وَأَرْجُلَكُمْ إِلَى الْكَعْبَيْنِ وَإِنْ كُنْتُمْ جُنُبًا فَاطَّهَّرُوا وَإِنْ كُنْتُمْ مَرْضَى أَوْ عَلَى سَفَرٍ أَوْ جَاءَ أَحَدٌ مِنْكُمْ مِنَ الْغَائِطِ أَوْ لَامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوهِكُمْ وَأَيْدِيكُمْ

"O you who believe! When you intend to offer As-Salat (the prayer), wash your faces and your hands (forearms) up to the elbows, rub (by passing wet hands over) your heads, and (wash) your feet up to ankles. If you are in a state of Janaba (i.e. had a sexual discharge), purify yourself (bathe your whole body). But if you are ill or on a journey or any of you comes from answering the call of nature, or you have been in contact with women and you find no water, then perform Tayammum with clean earth and rub therewith your faces and hands." (TMQ Al-Maida: 6)

The verse says if you 'lamastum' the women, it breaks the Wudhu. The word 'lamastum' has been interpreted as having two meanings:
a) Touching
b) Sexual intercourse

Thus the Ayah has a Dhanni Dalalah, i.e. it could mean touching women breaks the Wudhu, or sexual intercourse with a woman breaks the Wudhu.

B2. Example of Hadith Mutawatir with a Dhanniy (non-definite) meaning:

It was reported that the Prophet (saw) used to take off his Ihram in a specific manner. However, when the Sahabah (ra) told the Prophet (saw) that they took it off in a manner different from the way he (saw) took it off, the Prophet (saw) approved of their actions. Though this incident is Mutawatir, the rules to take off one's Ihram are many.

B3. Example of a Hadith Ahad with a Dhanniy (non-definite) meaning:

It is reported from a non-Mutawatir Hadith that the Prophet (saw) fasted 6 days in Shawwal. The non-definite meanings of this Hadith are:

a) Whether the six days of fasting are consecutive or not?
b) Fasting in which part of Shawwal?

So far we have discussed the Qata'i and Dhanni aspects of both Riwayah and Dalalah separately. However, the method to determine whether the Daleel (both in Riwayah and Dalalah) is Qata'i (conclusive) or Dhanni (non-definite) is the following:

1	Qata'i Riwayah روايــة قطعيــة	+	Qata'i Dalalah دلالــة قطعيــــــة	=	Qata'i Daleel دليــلٍ قطعــي
2	Dhanni Riwayah روايــة ظنيــة	+	Qata'i Dalalah دلالــة قطعيــــــة	=	Dhanni Daleel دليــلٍ ظنـــي

3	Dhanni Riwayah روايــة ظنيــة	+	Dhanni Dalalah دلالــة ظنيــة	=	Dhanni Daleel دليــلٍ ظنــي
4	Qata'i Riwayah روايــة قطعيــة	+	Dhanni Dalalah دلالــة ظنيــة	=	Dhanni Daleel دليــلٍ ظنــي

Any idea, thought, or concept related to the 'Aqeedah has to be based upon a Qata'i Daleel. As an example, the concept that Angels exists is based upon a Qata'i Daleel not Dhanni. Also, in Usul al-Fiqh, to establish a source for extracting rulings according to the strongest view, the source must base upon a Qata'i Daleel as well.

As an example, to consider Ijma' as-Sahabah (consensus of the Companions) as a source of rulings, the Daleel to prove the authority of Ijma' as-Sahabah has to be Qata'i both in Riwayah and Dalalah, though a ruling can be derived from either Qata'i or Dhanni Daleel.

One might wonder why understanding the text of Qur'an and Sunnah is so complicated?

By examining the text of Qur'an and Sunnah one can see that it is limited in its volume. With its limited text one can generate rulings to any problems affecting us anywhere and anytime until the Day of Judgment.

It is a miracle from Allah (swt) that the texts of the Qur'an and Sunnah have the ability to express numerous rulings from a single Ayah and Hadith; whereas, the ability to understand many meanings from a single text cannot be found in any other legal text in the world!

The challenge is for Muslims in each generation to try to understand the text and relate it to their lives since the Qur'an and Sunnah are relevant to all times and places.

Besides the point mentioned above, we have to realise that there are rules and guidelines related to understanding and deriving laws from the Qur'an and Sunnah. No one, without being acquainted with these rules (Arabic language, rules which differentiate one type of text from another, etc.) can understand the text of Qur'an and Sunnah.

Even to understand man-made constitutions, one has to spend a few years studying and understanding the text. So, how can we expect an individual who is unfamiliar with the Usul al-Fiqh to open up the Qur'an and Sunnah and start extracting laws from it?

2.1.3 Sources of Hukm Shar'i

As defined earlier, Hukm Shar'i are the rulings of Allah (swt) addressing our actions. These rulings are derived from certain sources. The sources, which are used to extract rulings, have to be based on Adilla Qata'iya (Decisive evidences).

The four definitive sources of Hukm Shar'i are; the Qur'an, Sunnah, Ijma' as-Sahabah and Qiyas. These will be discussed in the following chapters. This will be followed by a brief summary of the disputed sources which the scholars disagree on.

Qur'an

It is necessary to define the Qur'an, from this definition we will know what is allowed to be read in prayer and what is not. What is a proof in Hukm Shara'i and what is not? It also tells us what makes somebody a Kafir due to what he denies and what does not constitute disbelief. So when we define Qur'an we mean the Qur'an as evidence in Fiqh.

Qur'an is derived from the word Qara'a, which means to read or recite. Therefore, Qur'an linguistically means the book that has been read or recited.

As a term, Qur'an is Allah's (swt) miraculous speech revealed unto Muhammad (saw) in Arabic and transferred to us by the Tawatur method. The recitation of Qur'an is considered as an "Ibadah (act of worship). By Allah's (swt) speech it is meant that the Qur'an is the exact words of Allah (swt). It was revealed to Muhammad (saw) as it exists today. By 'miraculous' it is meant that no one can produce something similar to it.[3]

The term "in Arabic" refers to the language of the Qur'an, not to its scope or ideas because Qur'an addresses all Arabs and non-Arabs. The rules of Qur'an are universal and not restricted to one ethnic group or a specific area or time. All the Qu'ran is completely in Arabic and contains no foreign tongue. Imam Shafi says in his Risala, "The Qu'ran indicates that there is no portion in the Book of Allah that is not in the Arab tongue. He who expressed such an opinion [concerning foreign words in the Qu'ran] may have found some [men] who accepted it by [sheer] submission (taqlid) to his authority, leaving the matter of proof up to him and to those who have disagreed with him. However, by mere submission they have neglected [their duty]; Allah forgive them and us. But, perhaps, he who expressed the opinion that there are in the Quran [words] which are not of the Arab tongue-and his opinion was accepted by

[3] Al-Ihkaam, al-Aamidi 1/28, Rawdat al-Nathir, Ibn- Qudama al-Maqdisi 1/178

others meant that there are certain particular [words] which are not understood by some Arabs."

Furthermore, the ignorance of the Arabs about some words of the Quran is not evidence that the Quran contains foreign words. Rather there is a possibility that some non-Arabs learned some Arabic words and then it became wide spread in their language. Because of this some of their words may correspond to some words mentioned in the Quran, or maybe some foreign words entered in the Arabic language. And hence it became part of the Arabic language itself and therefore cannot be considered a foreign word anymore as the Arabs used it as part of their language, even if its root is foreign.

Many verses point that the Quran is completely in Arabic such as:

إِنَّا أَنْزَلْنَاهُ قُرْآنًا عَرَبِيًّا

"Verily, We have sent it down as an Arabic Qur'an." (TMQ Yusuf: 2)

كِتَابٌ فُصِّلَتْ آيَاتُهُ قُرْآنًا عَرَبِيًّا لِقَوْمٍ يَعْلَمُونَ

"A Book whereof the Verses are explained in detail - a Qur'an in Arabic for people who know." (TMQ Fussilat: 3)

قُرْآنًا عَرَبِيًّا غَيْرَ ذِي عِوَجٍ لَعَلَّهُمْ يَتَّقُونَ

"An Arabic Quran with no crookedness in it, perchance they will be God fearing." (TMQ Al-Zumar: 29)

وَكَذَلِكَ أَنْزَلْنَاهُ حُكْمًا عَرَبِيًّا

"Thus We sent it down as an Arabic Law." (TMQ Ar-Ra'ad: 37)

وَكَذَلِكَ أَوْحَيْنَا إِلَيْكَ قُرْآنًا عَرَبِيًّا

"And thus We have revealed unto you (O Muhammad [saw]) a Qur'an (in Arabic)." (TMQ Shurah: 7)

إِنَّا جَعَلْنَاهُ قُرْآنًا عَرَبِيًّا

"We verily, have made it a Qur'an in Arabic." (TMQ Zukhruf: 3)

By Tawatur method it is meant that a group or people for whom it is impossible to lie or conspire to fabricate a lie conveyed it to us. The Qur'an was transferred to us through an entire generation, not just by a group, to its successors, until it reached the present generation, without any interval in this transference.

Reciting Qur'an in Arabic by itself, without even comprehending its meaning is considered an "Ibadah. In this regard, Qur'an is different from Hadith, which cannot be recited as an act of "Ibadah. However, thinking about the meanings of both the Qur'an and Hadith is considered an "Ibadah.

3.1 Revelation of the Qur'an

The Qur'an was revealed to Prophet Muhammad (saw) in parts for a period of twenty-three years. It used to be revealed in various ways. Sometimes the revelation would come in quick succession and other times it would take a long time. The Qur'an was revealed gradually and not all at once due to wisdom (Hikma) Allah (swt) has mentioned in the noble Qur'an itself:

وَقَالَ الَّذِينَ كَفَرُوا لَوْلَا نُزِّلَ عَلَيْهِ الْقُرْآنُ جُمْلَةً وَاحِدَةً كَذَلِكَ لِنُثَبِّتَ بِهِ فُؤَادَكَ وَرَتَّلْنَاهُ تَرْتِيلًا

"And those who disbelieve say: 'Why is not the Qur'an revealed to him all at once?' Thus (it is send down in parts), that We may strengthen your heart thereby." (TMQ Al-Furqan: 32)

وَقُرْآنًا فَرَقْنَاهُ لِتَقْرَأَهُ عَلَى النَّاسِ عَلَى مُكْثٍ وَنَزَّلْنَاهُ تَنْزِيلًا

"And (it is) a Qur'an which We have divided (into parts), in order that you might recite it to men at intervals. And We have revealed it by stages." (TMQ Al-Isra': 106)

So, in order to strengthen the heart of the Messenger (saw), and so as to recite it to the people slowly without haste, and also in order to reveal it according to incidents and answers to questions, the Qur'an was revealed gradually and in parts for twenty-three years.

As we mentioned earlier the scholars have defined fiqh as, 'the knowledge of the practical Shar'iah rules that are derived from their detailed evidences (Al-Ad'Illah al-Tafsiliyy ah)'.

Knowledge of the Shari'ah rules began the day when they were revealed by Allah (swt). This took place mostly after the migration (Hijra) of the Prophet (saw) from Makkah to Madina. The Messenger of Allah (saw) stayed in Makkah for thirteen years, and then he resided in Madina for about ten years. The Quran was revealed in Makkah and continued throughout the Prophet's stay in Madina. Many of the verses of Ahkam (rules) were revealed in Madina. In this period verses from the Qur'an were revealed and the Messenger (saw) used to convey the Ahkam relating to answering practical questions and providing solutions to problems that arose.

The portion that was revealed in Makkah is approximately about two thirds of the Qur'an and they are known as the Makkan verses (Makki). In their totality they barely deal with few Ahkam. Rather they are confined to explaining the fundamentals of the Deen and calling people to them, such as the belief in Allah and His

Messenger, the Day of Judgement, the command to perform Salah, characterisation with moral attributes such as honesty, truthfulness, and forbidding evil actions such as fornication, murder, burying girls alive, deficiency in the measure and scales etc. The second portion that was revealed in Madina is close to a third of the Qur'an and they are known as the Madinan verses (Madani). These are verses of Mu'amalat (transactions) such as selling, renting and usury. They also include the Hudud, such as the Hadd of Zina (fornication) and stealing. They include the Jinayat (capital punishments) such as killing the one who killed someone intentionally or punishment of highway robbers and rules from the Bayyinat (testimonial evidences) such as the testimony of Zina and the rest of the testimonies. The remaining rules concerning the worships ('Ibadat) such as fasting, Zakah, Hajj and Jihad were also revealed during this period.

From this it becomes clear that even though rules of prayer were revealed in Makkah they do not form the body of rules but knowledge of a type of rule. As for what was revealed in Madina, they consisted of all the Ahkam. That is why knowledge of such rules is considered Fiqh. Therefore, it is more accurate for us to say that Fiqh began in Madina. And since Fiqh constitutes practical rules, they have been revealed to treat incidents that have taken place. The verses of Ahkam, more often than not were in connection to events that took place. So the disputants would refer judgment to the Messenger of Allah (saw) and he would judge between them according to the rules Allah (swt) has revealed to him, or on occasions of problems requiring solutions, so an Ayah or Ayat stating the Hukm would be revealed. In this manner the Qur'an was revealed gradually. The legislative aspect used to be quite evident in the revelation of the Qur'an. The Ayat did not treat assumptions that may or may not happen. Rather, they treated issues that actually took place and real problems that people face. The Qur'an continued to be revealed until the year in which the Messenger of Allah (saw) passed away. So, Allah (swt) perfected and completed the Deen and He revealed to him the last Ayah which is His (swt) saying in Surah al-Baqarah:

يَا أَيُّهَا الَّذِينَ آَمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِنْ كُنْتُمْ مُؤْمِنِينَ

"O you who believe! Be afraid of Allah and give up what remains (due to you) from riba (usury)." (TMQ Al-Baqarah: 278)

3.2 Arrangement of the Qur'an

During the time of the Prophet (saw), the text of the Qur'an was preserved in memory and also inscripted on flat stones, wood, and bones.

The Qur'an used to be revealed to the Messenger of Allah (saw) and he used to instruct people to memorise it and write it down on pieces of leather, paper, scapula, palm risp, bones, leaf stalks of date palm etc. When the Ayat were revealed he used to give the order that they be placed in their proper place in the Surah (chapter). Thus, he used to say put this Ayah in such and such Surah after such and such Ayah. So they used to put them in their proper place in the Surah. It has been narrated by Uthman (ra) that he said, "The Ayat used to be revealed to the Prophet (saw) and so he used to say:

«كان النبي ρ تنـزل عليه الآيات فيقول ضعوها في السورة التي يذكر فيها كذا»

"Put these Ayat in the Surah which mentions such and such thing." (Ibn Majah & Abu Dawud)

It was done in this manner until the whole Qur'an was revealed and Allah (swt) took his (saw) soul after the revelation of the Qur'an was complete. That is why the arrangement of the verses of every Surah in the form as it is in now in the present script (Mushaf) was determined by the revelation (Tawqeefan) from the Prophet (saw) transmitted to him (saw) by Jibreel from Allah (swt). According to this arrangement the Ummah transmitted the Qur'an from the

Prophet (saw) and there is no dispute about this. The order of the verses within the chapters (Surahs) was in the same form as we see today.

As for the arrangement of some of the chapters (Surahs) they were put together according to the Ijtihad of Sahabah (may Allah be pleased with them).

Imam Ahmad and the Sunan compilers have reported a hadith by Ibn 'Abbas which has been declared sound by Ibn Hibban and al-Hakim, they narrated that Ibn Abbas (ra) asked Uthman (ra) as to why he put Surah Al-Bara'ah (At-Tawba) after Surah Al-Anfal when it is from the Mathani (Surahs with less than 100 Ayahs) and Al-Bara'ah is from the Mi'un (consisting of about 100 Ayahs). Ibn Abbas said, "You have put them together them and you did not write between the line بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ 'Bism'illah ar-rahman ar-rahim" and you have placed them among the seven long (Tiwal) Surahs. So Uthman said, "Often a Surah would be revealed to the Messenger of Allah (saw) that would have a number of verses. When something was revealed to him – i.e. verses from it - he used to call someone from among those who used to write for him and say: 'Place these Ayah in the Surah, in which this and this is mentioned. Surah Al-Anfal was one of the first to be revealed in Madinah and Al-Bara'ah was at the end of the Qur'an. Their narrative used to resemble each other so I thought Anfal was part of Bara'ah." The Messenger of Allah (saw) died and he did not clarify to us if Al-Anfal was part of Al-Bara'ah. Thus, it has been narrated by Sa'eed b. Jubayr from Ibn 'Abbas who said that:

«كان النبي ρ لا يعلم ختم السورة حتى ينـزل بسم الله الرحمن الرحيم»

"The Prophet (saw) did not know the ending of a Surah until 'Bism'illah ar-rahman a-rahim' was revealed." In another narration:

«فإذا نزلت بسم الله الرحمن الرحيم علموا أن السورة قد انقضت»

"When Bism'illah ar-rahman ar-rahim was revealed they knew that the Surah had come to an end."

This indicates that the verse order in every Surah was determined by revelation (Tawqifiyyan). And since the Prophet (saw) did not elucidate the issue of al-Bara'ah, Uthman (ra) added it to al-Anfal according to his own Ijtihad. The author of al-Iqna' reported that the Bism'illah (abbr. for Bism'illah ar-rahman ar-rahim) for al-Bara'ah is present in the Mushaf (collection) of Ibn Mas'ud. It has been reported that the Sahabah used to keep copies whose arrangement of Surahs was different though there were no differences in the verse arrangement. So the Mushaf of Ibn Mas'ud was compiled in a manner different to the Mushaf of Uthman in terms of the arrangement of the Surahs. It began with Al-Fatiha, then Al-Baqarah, Al-Nisa and Aal-Imran. Contrary to the Uthmani Mushaf whose arrangement is al-Fatiha, al-Baqarah, Aal-Imran and then Al-Nisa. None of them were compiled according to the order of revelation. It is said that the Mushaf of 'Ali was according to the order of revelation, it began with Iqra', then Al-Muddaththir, Nun wal qalam, Al-Muzzammil, Tabbat, Al-Takweer, Sabbih, it went on in this manner to the end of the Makkan Surahs and then to the Madinan Surahs.

All of this indicates that the Surah arrangement in relation to some Surahs were arranged according to the Ijtihad of the Sahabah. That is why maintaining the arrangement of Surahs in recitation in not obligatory whether in reciting the Qur'an (Tilaawah), in the prayer (Salah), in a lesson or in teaching, as evidenced by the fact that the Prophet (saw) read Surah al-Nisa before Aal-Imran in his night prayer. As for what has been reported about the prohibition of reciting the Qur'an in reverse order, what was intended was that an Ayah in one Surah should not be read in reverse, not the recitation of Surahs in reverse order.

The angel Jibreel used to read once every year all of what had been revealed to the Messenger (saw) from the Qur'an. And in the year in which the Messenger of Allah (saw) died Jibreel recited the

whole of the Qur'an twice to the Messenger (saw). It has been narrated by Aisha (ra.) on the authority of Fatimah (ra) that:

«أسَرَّ إليّ النبي ρ أن جبريل يعارضني بالقرآن كل سنة وأنه عارضني العام مرتين ولا أراه حضر إلا أجلي»

"The Prophet (saw) confided in me that: **'Jibreel used to read the Qur'an to me every year.'**" (Bukhari)

It has also been narrated by Abu Hurayra that he said:

«كان يعرض على النبي ρ القرآن كل عام مرة فعرض عليه مرتين في العام الذي قبض فيه»

"Jibreel used to present the Qur'an to the Prophet once a year, but he presented it twice to him in the year he died." (Bukhari)

Jibreel's presentation of the Qur'an to the Messenger (saw) every year means that he presented the arrangement of its verses in relation to other verses and the arrangement of its verses in their respective chapters because presenting the book means to present its sentences, words and arrangement.

There are also other Ahadith which explicitly mention the arrangment of verses. They state the verses in relation to each other and the arrangment of verses in their respective chapters,

«ضعوا هذه الآيات في سورة كذا بعد آية كذا»

"Place these verses in such and such Surah after such and such Ayah."

«ضعوا هؤلاء الآيات في السورة التي ذكر فيها كذا وكذا»

"Place those verses in that Surah that mentioned such and such thing."

A Surah would end and another Surah would begin as decreed by Allah through Jibreel. All of this definitely indicates that the arrangement of verses in their chapters and the form of the Surahs in terms of the number of verses and their places, all of that is determined (Tawqifi) by Allah (swt). The Ummah transmitted it in this form from the Prophet (saw) and that is proven by Tawaatur (recurrent reports).

It was narrated by the mother of the believers, Aisha (ra), that a person from Iraq came to her and asked, "What type of shroud is the best?" Aisha said, "May Allah be merciful to you! What does it matter?" He said, "O mother of the believers! Show me (the copy of) your Qur'an." She said, "Why?" He said, "In order to compile and arrange the Qur'an according to it, for people recite it with its Surahs not in proper order." 'Aisha said:

(أي الكفن خير؟ قالت: ويحك وما يضرك؟ قال: يا أم المؤمنين، أريني مصحفك. قالت: لِمَ؟ قال: لعليّ أؤلف القرآن عليه فإنه يقرأ غير مؤلف. قالت: وما يضرك أيه قرأت قبل؟ إنما نزل أول ما نزل منه سورة من المفصل فيها ذكر الجنة والنار، حتى إذا ثاب الناس إلى الإسلام نزل الحلال والحرام، ولو نزل أول شيء لا تشربوا الخمر، لقالوا: لا لا ندع الخمر أبداً. ولو نزل لا تزنوا، لقالوا: لا ندع الزنا أبداً، لقد نزل بمكة على محمد ρ وإني لجارية ألعب: **[بَلِ السَّاعَةُ مَوْعِدُهُمْ وَالسَّاعَةُ أَدْهَى وَأَمَرُّ (46)]**. وما نزلت سورة البقرة والنساء إلا وأنا عنده. قال: فأخرجت له المصحف فأملت عليه آي السور)

"What does it matter which part of it you read first? Know that the first thing that was revealed thereof was a Surah from Al-Mufassal, and in it was mentioned Paradise and the Fire. When the people embraced Islam, the verses regarding legal and illegal things were revealed. If the first thing to be revealed was: 'Do not drink alcoholic drinks.' people would have said, 'We will never leave alcoholic drinks,' and if there had been revealed, 'Do not commit illegal sexual intercourse, 'they would have said, 'We will never give up illegal sexual

intercourse.' While I was a young girl of playing age, the following verse was revealed in Makkah to Muhammad:

بَلِ السَّاعَةُ مَوْعِدُهُمْ وَالسَّاعَةُ أَدْهَى وَأَمَرُّ

"Nay! But the Hour is their appointed time (for their full recompense), and the Hour will be more grievous and more bitter." (TMQ Al-Qamar: 46)

Surah Al-Baqara and Surah al-Nisa were revealed while I was with him." Then 'Aisha took out the copy of the Qur'an for the man and dictated to him the verses of the Surahs. This hadith shows that the chapters of the Qur'an had not been put together in order. Together with what was mentioned earlier about the different arrangements in the Mushaf's of various Sahabah it becomes clear that the arrangement of the Surahs was according to the Ijtihad of the Sahabah.

3.3 Compilation of the Qur'an

It has been proven by decisive and definite evidence that when the Prophet (saw) died the whole Qur'an had been written and all of it was preserved in the hearts of the Sahabah (may Allah be pleased with them). An verse or verses would be revealed and so he (saw) used to order that they be written down before him at once. He (saw) did not prevent the Muslims from writing the Qur'an other than what he used to dictate to the scribes who wrote down the revelation.

Abu Sa'id al-Khudri narrated that the Messenger of Allah (saw) said:

«لا تكتبوا عني ومن كتب عني غير القرآن فليمحه»

"Do not write down anything from me, whosoever writes anything I have said other than the Qur'an let him erase it." (Muslim)

What the scribes used to write of the revelation was collected on sheets (Suhuf). He (swt) said:

رَسُولٌ مِنَ اللَّهِ يَتْلُو صُحُفًا مُطَهَّرَةً

"A Messenger from Allah, reciting purified pages (Suhuf) (of the Qur'an)." (TMQ Al-Bayyinah: 2)

كَلَّا إِنَّهَا تَذْكِرَةٌ (11) فَمَنْ شَاءَ ذَكَرَهُ (12) فِي صُحُفٍ مُكَرَّمَةٍ (13)
مَرْفُوعَةٍ مُطَهَّرَةٍ (14) بِأَيْدِي سَفَرَةٍ (15) كِرَامٍ بَرَرَةٍ (16)

"Nay, indeed it (verses of the Qur'an) are an admonition. So whoever wills, let him pay attention to it. (It is) in Records held (greatly) in honour. Exalted (in dignity), purified. In the hands of scribes, Honourable and obedient." (TMQ Al-Abbasa: 11-16)

He (saw) left written everything that was between the two covers of the Mushaf which had been written down in front of him. 'Abd al-'Aziz b Rufayya' narrated:

«دخلت أنا وشداد بن معقل على ابن عباس رضي الله عنهما فقال له شداد بن معقل: أترك النبي ρ من شيء؟ قال: ما ترك إلا ما بين الدفتين. قال: ودخلت على محمد بن الحنفية فسألنا فقال ما ترك إلا ما بين الدفتين»

"Shaddad bin Ma'qil and I entered upon Ibn 'Abbas. Shaddad bin Ma'qil asked him, "Did the Prophet leave anything (besides the Qur'an)?" He replied: "**He did not leave anything except what is Between the two bindings (of the Qur'an).**" Then we visited Muhammad bin Al-Hanafiyya and asked him (the same question). He replied, **"The Prophet did not leave except what is between the bindings (of the Qur'an)."**

An Ijma' (consensus) has taken place on the fact that all of the verses of the Qur'an in their respective chapters (Surahs) had been

written down directly in front of the Messenger (saw) when the revelation was revealed to him, and that they were written on sheets (Suhuf). The greatest of Messengers died content about the Qur'an, his greatest miracle which established the proof for the Arabs and the world. He did not fear for the verses of the Qur'an that they would be lost because Allah (swt) has preserved the Qur'an with an explicit text:

إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ

"Verily We: It is We Who have sent down the Zikr (the Qur'an) and surely, We will guard it (from corruption)." (TMQ Al-Hajj: 9)

Due to the preservation of the Qur'an in its written form and in the memory of the Sahabah after the death of the Messenger the Sahabah initially did not feel the need to compile the Qur'an in one book. This was the case until many of the Huffaz (memorisers of the Qur'an) had been killed in the Riddah (apostasy) wars. Due to this Umar (ra) feared for the loss of certain sheets and death of the Qurra' (Those who had committed the whole of the Qur'an to memory), thereby causing some verse to be lost. So he thought about bringing the written sheets together (in one compilation). He presented his idea to Abu Bakr (ra) who eventually accepted this and ordered for the compilation of the Qur'an.

It has been narrated by 'Ubayd b. al-Sibaq that Zayd b al-Thabit Al-Ansari said: "Abu Bakr sent for me after the (heavy) casualties among the warriors (of the battle) of Yamama (where a great number of Qurra' were killed). Umar was present with Abu Bakr who said, "Umar has come to me and said, 'The people have suffered heavy casualties on the day of (the battle of) Yamama, and I am afraid that there will be more casualties among the Qurra' at other battle-fields, whereby a large part of the Qur'an may be lost, unless you collect it. And I am of the opinion that you should collect the Qur'an.'" Abu Bakr (ra) added, "I said to Umar, 'How can I do something which Allah's Apostle has not done?' Umar said

(to me), 'By Allah, it is (really) a good thing.' So Umar kept on pressing, trying to persuade me to accept his proposal, till Allah opened my bosom for it and I had the same opinion as Umar." Zayd b al-Thabit added: "Umar was sitting with him (Abu Bakr) and was not speaking to me. "You are a wise young man and we do not suspect you (of telling lies or of forgetfulness) and you used to write the revelation (Wahy) for Allah's Apostle. Therefore, look for the Qur'an and collect it (in one manuscript)." "By Allah, if he (Abu Bakr) had ordered me to shift one of the mountains (from its place) it would not have been harder for me than what he had ordered me concerning the collection of the Qur'an. I said to both of them, 'How dare you do a thing which the Prophet has not done?' Abu Bakr said, 'By Allah, it is (really) a good thing. So I kept on arguing with him about it till Allah opened my bosom for that which He had opened the bosoms of Abu Bakr and Umar. So I started locating Quranic material and collecting it from parchments, scapula, leaf-stalks of date palms and from the memories of men (who knew it by heart). I found with Khuzaima two Verses of Surah Al-Tawbah which I had not found with anybody else (in terms of the written form), (and they were):

لَقَدْ جَاءَكُمْ رَسُولٌ مِنْ أَنْفُسِكُمْ عَزِيزٌ عَلَيْهِ مَا عَنِتُّمْ حَرِيصٌ عَلَيْكُمْ بِالْمُؤْمِنِينَ رَءُوفٌ رَحِيمٌ

"Verily, there has come unto you a Messenger from amongst yourselves. It grieves him that you should receive any injury or difficulty." (TMQ At-Tawbah: 128) until the end of Bara'ah."

The manuscript of the Quran which was collected, remained with Abu Bakr (ra) until Allah (swt) took him, and then with Umar (ra) during his lifetime, and finally it remained with Hafsa (ra), Umar's daughter. Zayd's (ra) compilation of the Qur'an did not consist of what he wrote down from the Huffaz. Rather his compilation brought together what he had written himself in front of the Messenger of Allah (saw). He did not place one sheet with another

sheet in order to compile them unless two witnesses testified for that sheet that it was written in the presence of the Messenger of Allah (saw). Furthermore, he did not accept a sheet unless it met two conditions. Firstly, that it was present in written form with one of the Sahabah. Secondly, that it has been memorised by one of the Sahabah. When the written and memorised forms concurred with the sheet that was intended to be compiled, he took it, otherwise he did not accept it. That is why he refrained from taking the end of Surah al-Bara'ah until he found it in written form with Abu Khuzayma even though Zayd could himself recall and remember it. It has been narrated via Yahya b 'Abd al-Rahman b. Hatib that he said: "Umar stood up and said; whosoever has received anything of the Qur'an from the Messenger of Allah (saw), let him bring it forth. They used to write that on sheets, tablets and palm risp." Ibn Hatib said: "He (Zayd) did not accept anything from anyone until two witnesses had given testimony. This shows that Zayd was not satisfied by merely finding something in a written form until the one who received it testified that he had heard it from the Messenger of Allah (swt), despite the fact that Zayd already had it memorised. He did this due to his extreme caution."

Thus, the process of compilation was nothing other than the bringing together of sheets that had already been written in the presence of the Messenger of Allah (saw) into one book between two covers. The Qur'an used to be written down on sheets but they were separately kept. So Abu Bakr (ra) assembled them in one place. That is why Abu Bakr's order to compile the Qur'an was not an order to write it down in one Mushaf, rather it was an order to bring the sheets that had been written in the Messenger's presence together in one place. This was an order to make certain that they are in the same original form by supporting them with the testimonies of two witnesses that they had been written in front of the Messenger of Allah (saw), also that they were in the possession of the Sahabah in written form and they had memorised them. These sheets remained preserved in the possession of Abu Bakr (ra) during his life and then with Umar (ra) during his lifetime and them with Hafsa (ra) the daughter of Umar, the mother of the

believers in accordance with Umar's bequest. From this it becomes clear that Abu Bakr's compilation of the Qur'an constituted only the bringing together of sheets that had been written in the presence of Allah's Messenger and it was not an actual compilation of the Qur'an.

This was regarding the compilation of Abu Bakr. As for the compilation of Uthman (ra), in the third or some say the second year of his Khilafah, in the year 25 AH, Hudhayfa b. al-Yaman (ra) approached Uthman in Madinah at the time when the people of al-Sham and the people of Iraq were waging war to conquer Armenia and Azerbijan. Hudhayfa was afraid of the people of al-Sham and Iraq's differences in the recitation of the Qur'an. He saw that the people of al-Sham reading according to the recitation of Ubay b. Ka'b (ra), and they were coming with readings the people of Iraq had not heard of. Also he saw the people of Iraq reading according to the recitation of Abdullah b. Mas'ud (ra) and so they had certain readings that the people of al-Sham had not heard of. Thus, they began to charge each other of Kufr (disbelief). They both disagreed about a verse in Surah al-Baqarah. One read:

وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ

"And perform properly the hajj and 'Umra for Allah (wa atimmul hajja wal 'umrata lillah)." (TMQ Al-Baqarah: 196)

The other read: "And perform properly the hajj and 'Umra to the House (of Allah) (wa atimmul hajja wal 'umrata lil bayt)." So Hudhayfah became angry and his eyes went red with rage. It has been narrated about Hudhayfah that he said: "The people of Kufah adhere to the recitation of Ibn Mas'ud and the people of Basra adhere to the recitation of Abu Musa. By Allah! If I go to the Leader of the Believers I will order him to make it a single recitation." So he travelled to Uthman (ra). It has been reported by Ibn Shihab that Anas b. Malik (ra) narrated: Hudhaifa bin al-Yaman came to Uthman at the time when the people of Sham and the

people of Iraq were waging war to conquer Armenia and Azerbijan. Hudhayfa was afraid of their (the people of Sham and Iraq) differences in the recitation of the Qur'an, so he said to Uthman, "O chief of the Believers! Save this nation before they differ about the Book (Quran) as Jews and the Christians did before." So Uthman sent a message to Hafsa saying, "Send us the manuscripts of the Qur'an so that we may compile the Qur'anic materials in perfect copies and return the manuscripts to you." Hafsa sent it to Uthman. Uthman then ordered Zayd bin Thabit, 'Abd Allah b. al-Zubair, Said b. al-'As and 'Abd al-Rahman b. Harith b. Hisham to rewrite the manuscripts in perfect copies. Uthman said to the three Quraishi men, "In case you disagree with Zayd b. al-Thabit on any point in the Qur'an, then write it in the dialect of Quraish, the Qur'an was revealed in their tongue." They did so, and when they had written many copies, Uthman returned the original manuscripts to Hafsa. Uthman sent to every Muslim province one copy of what they had copied, and ordered that all the other Qur'anic materials, whether written in fragmentary manuscripts or whole copies, be burnt. The number of copies made was seven. The seven Mushafs were sent to Makkah, al-Sham, Yemen, Bahrayn, Basra, Kufa, and one copy was kept in Madina.

Therefore, Uthman's action was not the compilation of the Qur'an. Rather it constituted in only the copying and transcription of the same thing transcribed from the Messenger of Allah (saw) as it was. He he did not do anything other than make seven copies from the preserved copy in the possession of Hafsa, mother of the believers and unite the people on this single script and forbade any other script or dictation other than it. The matter became settled on this copy as a script and dictation. It is the same script and dictation in which the sheets were written in the presence of Allah's Messenger (saw) when the revelation was sent down, and it is the same copy which Abu Bakr (ra) had compiled. Then the Muslims began to make copies from this copy and not any other copy. Nothing remained except the Mushaf of Uthman in its script. When printers came about the Mushaf was printed from this copy with the same script and dictation.

The difference between the compilation of Abu Bakr and that of Uthman is that the compilation of Abu Bakr took place due to the fear that something would be lost from the Qur'an if any of its memorisers died out.

As even though it was written on sheets it had not been collected in one place in a single book, thus it was compiled. The compilation of Uthman took place because differences increased regarding aspects of the Qur'an when they read it due to the expansion of the language. This led some to accuse others of making an error. It was feared that the matter would escalate and become seriously worse. So the original compilation was copied seven times and sent to the different Muslim provinces. The Mushaf that we now have before us is the same Mushaf revealed to the Messenger of Allah (saw). It is the same mushaf that Abu Bakr brought together when the sheets were compiled in one place. And it is the same one from which Uthman transcribed the seven copies and ordered for the rest to be burned. It is the same noble Qur'an in its verse arrangement in relation to each other and their arrangment in their respectives Surahs, script and dictation.

As for the original copy dictated by the Messenger of Allah (saw) from the revelation, those sheets were compiled together and then copied. It remained protected in the possession of Hafsa, mother of the believers until Marwan became the Wali (governor) of Madinah and he tore it up. Since it was not considered binding because copies of the Mushaf had spread everywhere. Ibn Shihab narrated that Salim b. 'Abdullah b. Umar informed him: That Marwan used to send for Hafsa – i.e. when he was the Amir of Madinah via Mu'awiyya - asking her for the sheets from which the Qur'an was written. She refused to give him it. Salim said: When Hafsa died, while we were returning from her burial Marwan communicated his firm decision to 'Abdullah b. Umar that he send him that mushaf. So 'Abdullah b. Umar sent it to him. Marwan ordered it to be destroyed. He said: "I did this because I feared that

if it remained with people for a long time then people will have doubts regarding these sheets."

3.4 Open & Hidden meaning?

The noble Qur'an does not have a Zaahir (outer) or Baatin (secret) meaning as some claim. It is an Arabic speech, which has come in the tongue of the Arabs. He (swt) said:

إِنَّا أَنْزَلْنَاهُ قُرْآنًا عَرَبِيًّا

"We have sent it down as an Arabic Qur'an." (TMQ Yusuf: 2)

بِلِسَانٍ عَرَبِيٍّ مُبِينٍ

"In the plain Arabic language." (TMQ Ash-Shu'ara: 195)

It is understood the same way as any Arabic speech is understood. What Allah (swt) intends by the Qur'an is what has been expressed by the noble Qur'an itself. Allah (swt) did not intend anything other than what was expressed. His intention is only understood from understanding of the syntax. The Arabic meaning is what Allah (swt) intended in His speech, which He (swt) expressed in the Arabic words and Arabic style. Accordingly, the import of the speech is what the speech indicated, through the linguistic proofs and the Shar'i indication mentioned in the Kitaab or Sunnah. This has no 'outer' or 'inner'; it rather has a meaning indicated by the Arabic speech, through the understanding of the Arabic words and styles.

3.6 The Muhkamaat (clearcut) and Mutashaabihaat (ambiguous)

The Qur'an is composed of Ayat which are Muhkamaat (clearcut) and Ayat which are Mutashaabihaat (ambiguous), due to the saying of Allah (swt):

هُوَ الَّذِي أَنْزَلَ عَلَيْكَ الْكِتَابَ مِنْهُ آيَاتٌ مُحْكَمَاتٌ هُنَّ أُمُّ الْكِتَابِ وَأُخَرُ مُتَشَابِهَاتٌ

"In it are Verses that are entirely clear, they are the foundations of the Book; and others not entirely clear." (TMQ Al-Imran: 7)

As for the Muhkam (clear) part, it is the text whose meaning is apparent and clear such that it precludes the possibility of having any other meaning, i.e. its indication is explicit and not open to interpretation. Such as the saying of Allah (swt):

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

"Allah has permitted trading and forbidden Riba (usury)." (TMQ Al-Baqarah: 275)

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا

"Cut off (from the wrist joint) the (right) hand of the thief, male or female." (TMQ Al-Ma'ida: 38)

وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ

"And there is (a saving of) life for you in Al-Qisas (the Law of Equality in punishment), O men of understanding." (TMQ Al-Baqarah: 179)

As for the Mutashaabih (ambiguous) part, it is the opposite of Muhkam. It is the text which is open to more than one meaning. It is open to a number of conflicting meanings. For example:

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ

"And divorced women shall wait (as regards their marriage) for three menstrual periods." (TMQ Al-Baqarah: 228)

أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ

"Unless they (the women) agree to forego it, or he (the husband), in whose hands is the marriage tie." (TMQ Al-Baqarah: 237)

أَوْ لَامَسْتُمُ النِّسَاءَ

"Or you have been in contact with women." (TMQ Al-Ma'ida: 6)

وَيَبْقَى وَجْهُ رَبِّكَ ذُو الْجَلَالِ وَالْإِكْرَامِ

"And the Face of your Lord full of Majesty and Honour will abide forever." (TMQ Ar-Rahman: 27)

فَإِنَّكَ بِأَعْيُنِنَا

"For verily, you are under Our Eyes." (TMQ At-Tur: 48)

He (swt) also said:

مِمَّا عَمِلَتْ أَيْدِينَا

"From Our Handiwork" (TMQ Ya-Seen: 71)

And other such examples, whose wording have a number of conflicting meanings cannot be reconciled. Rather they need a linguistic Qareenah (indication), which would specify one of the meanings. It might also have an apparent meaning that implies anthropomorphisation of Allah (swt), a matter that is not possible, either rationally or by Shar'a, for the word to indicate. So, it needs a linguistic or Shar'i Qareenah (indication) to determine the intended meaning.

3.7 Asbaab an-nuzool (Circumstances of revelation)

Some jurists have coined the term 'Asbab an-nuzool' for incidents that the revelation came to clarify.
The question arises, do these Ahkam remain specific to these incidents and not go beyond them or do we apply these Ahkam on every similar incident?

The answer is, these Ahkam are applied on every similar incident and this is established in two ways:

1. By examining all the Ayat which were revealed clarifying the rules of these incidents we find that they came with expressions that were general and not specific and hence they must be taken in their generality.

2. The Messenger (saw) took these Ahkam in their generality and applied them on every similar incident.

So the Ayah of stealing was revealed regarding the theft of Majn or Rida of Safwaan, the Ayah of Zihar with regards to Salamah bint Sakhar or Khawlah bint Tha'labah the wife of Aws b. Saamit, the Ayah of imprecation (Li'aan) regarding Hilal b. Umayyah. Even though they were all revealed regarding specific incidences the Messenger (saw) and the Sahabah (may Allah be pleased with them) took them as general due to their general form and they applied them on every similar incident. This is proven by the Sunnah and Ijma of the Sahabah.

It was from these evidences that the follwing Shari'ah principle was deduced: **'The consideration is for the generality of the expression and not for the specificity of the cause'** (Al-'ibra bi 'umoom al-lafz laa bi khususiyyat as-sabab).

3.8 Abrogation (Naskh)

Linguistically abrogation means canceling (Izaalah) or changing the thing and transforming it from one state to another while it still exists in essence.

Technically, it is the address (Khitaab) of the legislator which prevents the continuation of a Hukm Shar'i of a previous address (Khitaab).

As for the term abrogator (Naasikh) it may refer to Allah (swt):

مَا نَنْسَخْ مِنْ آيَةٍ

"Whatever a Verse (revelation) do We abrogate." (TMQ Al-Baqarah: 106)

Or it may refer to an Ayah: Thus, we say the 'Ayah of the sword' (At-Tawbah: 29) abrogated so and so Ayah.

As for the abrogated (Mansookh) it is the Hukm which has been lifted, like the Hukm which obliges paying the Sadaqah in front of the Messenger (saw) in the confidence of the Messenger (saw), the Hukm of bequests for hiers, the Hukm of waiting for complete year in respect to the widow. In abrogation the Hukm abrogated must be Shar'i and the evidence which indicates the lifting of the Hukm must be Shar'i and come after the address whose Hukm has been abrogated.

Allah (swt) has informed us of the occurrence of abrogation and the Ahkam which have been abrogated show us its true occurrence.

مَا نَنْسَخْ مِنْ آيَةٍ أَوْ نُنْسِهَا نَأْتِ بِخَيْرٍ مِنْهَا أَوْ مِثْلِهَا أَلَمْ تَعْلَمْ أَنَّ اللَّهَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ

"Whatever a Verse (revelation) do We abrogate or cause to be forgotten, We bring a better one or similar to it. Know you not that Allah is able to do all things?" (TMQ Al-Baqarah: 106)

وَإِذَا بَدَّلْنَا آيَةً مَكَانَ آيَةٍ وَاللَّهُ أَعْلَمُ بِمَا يُنَزِّلُ قَالُوا إِنَّمَا أَنْتَ مُفْتَرٍ بَلْ أَكْثَرُهُمْ لَا يَعْلَمُونَ

"And when We change a Verse in place of another, and Allah knows the best of what He sends down, they (the disbelievers) say: you (O Muhammad [saw]) are but a liar. Nay but most of them know not." (TMQ An-Nahl: 101)

Sheikh Ata ibn Khalil Abu al-Rashta in his excellent book 'Teyseer al wusool Ila al-Usul' (To make understanding Usul easy) lists the following types of abrogation:

a) Abrogation of the Hukm of the speech (Khitaab) without an alternative Hukm:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَاجَيْتُمُ الرَّسُولَ فَقَدِّمُوا بَيْنَ يَدَيْ نَجْوَاكُمْ صَدَقَةً ذَلِكَ خَيْرٌ لَكُمْ وَأَطْهَرُ فَإِنْ لَمْ تَجِدُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ (12) أَأَشْفَقْتُمْ أَنْ تُقَدِّمُوا بَيْنَ يَدَيْ نَجْوَاكُمْ صَدَقَاتٍ فَإِذْ لَمْ تَفْعَلُوا وَتَابَ اللَّهُ عَلَيْكُمْ فَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ وَأَطِيعُوا اللَّهَ وَرَسُولَهُ وَاللَّهُ خَبِيرٌ بِمَا تَعْمَلُونَ

"O you who believe! When you (want to) consult the Messenger (Muhammad [saw]) in private, spend something in charity before your private consultation. That will be better and purer for you. But if you find not the means for it, then verily, Allah is oft forgiving, Most Merciful. Are you afraid of spending in charity before your private consultation with him? If then you do it not, and Allah has forgiven you, then (at least) perform Salat and give Zakat and obey Allah and His Messenger. And Allah is All-Aware of what you do." (TMQ Al-Mujadallah: 12-13)

This is an abrogation of giving charity before consulting the Messenger (saw) in private.

b) Abrogation with a lighter alternative:

The ratio of steadfastness goes from 1-10 to 2-10:

يَا أَيُّهَا النَّبِيُّ حَرِّضِ الْمُؤْمِنِينَ عَلَى الْقِتَالِ إِنْ يَكُنْ مِنْكُمْ عِشْرُونَ صَابِرُونَ يَغْلِبُوا مِائَتَيْنِ وَإِنْ يَكُنْ مِنْكُمْ مِئَةٌ يَغْلِبُوا أَلْفًا مِنَ الَّذِينَ كَفَرُوا بِأَنَّهُمْ قَوْمٌ لَا يَفْقَهُونَ

"O Prophet (Muhammad [saw])! Urge the believers to fight. If there are twenty steadfast persons amongst you, they will overcome two hundred, and if there be a hundred steadfast persons they will overcome a thousand of those who disbelieve, because they (the disbelievers) are people who do not understand."(TMQ Al-Anfal: 65)

الْآنَ خَفَّفَ اللَّهُ عَنْكُمْ وَعَلِمَ أَنَّ فِيكُمْ ضَعْفًا فَإِنْ يَكُنْ مِنْكُمْ مِئَةٌ صَابِرَةٌ يَغْلِبُوا مِائَتَيْنِ وَإِنْ يَكُنْ مِنْكُمْ أَلْفٌ يَغْلِبُوا أَلْفَيْنِ بِإِذْنِ اللَّهِ وَاللَّهُ مَعَ الصَّابِرِينَ

"Now Allah has lightened your (task), for He knows that there is weakness in you. So if there are of you a hundred steadfast persons, they shall overcome two hundred…" (TMQ Al-Anfal: 66)

c) Abrogation with a similar alternative Hukm:

The abrogation of facing Al-Quds to facing the Ka'bah in Makkah:

قَدْ نَرَى تَقَلُّبَ وَجْهِكَ فِي السَّمَاءِ فَلَنُوَلِّيَنَّكَ قِبْلَةً تَرْضَاهَا فَوَلِّ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِ وَحَيْثُ مَا كُنْتُمْ فَوَلُّوا وُجُوهَكُمْ شَطْرَهُ وَإِنَّ الَّذِينَ أُوتُوا الْكِتَابَ لَيَعْلَمُونَ أَنَّهُ الْحَقُّ مِنْ رَبِّهِمْ وَمَا اللَّهُ بِغَافِلٍ عَمَّا يَعْمَلُونَ

"Verily! We have seen the turning of your (Muhammad [saw]) face towards the heaven. Surely We shall turn you to a Qiblah (prayer direction) that shall please you, so turn your face in the direction of al-masjid al-haraam. And whosesoever you people are, turn your faces in prayer in that direction." (TMQ Al-Baqarah: 144)

d) Abrogation with a more difficult alternative Hukm.

In the beginning of Islam it was obligatory to confine women who have committed fornication to houses and punish them as a Hadd for committing zina. This has been abrogated by the Hukm which is well known:

وَاللَّاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا (15) وَاللَّذَانِ يَأْتِيَانِهَا مِنْكُمْ فَآذُوهُمَا فَإِنْ تَابَا وَأَصْلَحَا فَأَعْرِضُوا عَنْهُمَا إِنَّ اللَّهَ كَانَ تَوَّابًا رَحِيمًا (16)

"And if they testify, confine them (i.e. women who have committed fornication) to houses until death comes to them or Allah ordains for them some (other) way. And the two persons among you who commit illegal sexual intercourse, punish them both. And if they repent (promise Allah that they will never repeat, ie commit illegal sexual intercourse and other similar sins) and do righteous good deeds, leave them alone." (TMQ An-Nisa:15 -16)

Another example is the abrogation of the fast of "Ashura for the fast of Ramadhan.

'Aisha (ra) narrated that; in the time of Jahiliyyah the Quraysh used to fast the day of "Ashura. And the Messenger (saw) used to fast on this day as well. When the Messenger (saw) went to Madinah he fasted on this day and instructed the people to fast as well. When Ramadhan became obligatory, he (saw) said:

«من شاء صامه ومن شاء تركه»

"Whosoever wishes to fast on this day let him fast and whosoever wants let him leave it." (Bukhari & Muslim)

It is important to know what is abrogated, is the Hukm and not the recitation, this is what has been proven. Thus we can see the abrogation of the Hukm of the one year 'Iddah period and the abrogation of bequests by parents. As for the two Ayat which have been abrogated, they are still recited and this is the case for the rest of the abrogated Ayat. As for the abrogation of recitation, such a case is not to be found. The absence of this type of abrogation is an evidence to say it is not allowed.

As for the Ahadith mentioned regarding this subject they are all Ahad (singular) narrations which cannot be relied upon in matters of 'Aqeedah.

e) How abrogation takes place

First: Abrogation of the Qur'an with Qur'an:

The abrogation of giving Sadaqah before private consultation with the Messenger (saw).

Similarly, the one year's 'Iddah has been changed to 4 months and 10 days.

Allah (swt) said:

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا وَصِيَّةً لِأَزْوَاجِهِمْ مَتَاعًا إِلَى الْحَوْلِ غَيْرَ إِخْرَاجٍ فَإِنْ خَرَجْنَ فَلَا جُنَاحَ عَلَيْكُمْ فِي مَا فَعَلْنَ فِي أَنْفُسِهِنَّ مِنْ مَعْرُوفٍ وَاللَّهُ عَزِيزٌ حَكِيمٌ

"And those of you who die and leave behind wives should bequeath for their wives a year's maintenance and residence without turning them out, but if they (wives) leave, there is no sin on you for that which they do of themselves, provided it is honourable. And Allâh is All-Mighty, All-Wise." (TMQ Al-Baqarah: 240)

He (swt) said:

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا

"And those of you who die and leave wives behind them, they (the wives) shall wait (as regards their marriage) for four months and ten days…" (TMQ Al-Baqarah: 234)

The same goes for the Ahkam mentioned previously.

Second: Abrogation of the Sunnah by Sunnah.

This is when one Mutawaatir abrogates another Mutaawatir, an Ahad (singular) narration is abrogated by Mutawaatir or an Ahad is abrogated by another Ahad narration. Like the Ahadith of the Prophet (saw):

«كُنْتُ قَدْ نَهَيْتُكُمْ عَنْ زِيَارَةِ الْقُبُورِ، أَلاَ فَزُورُوهَا»

"I used to forbid you from visiting the graves, now you should visit them." (Muslim, Tirmidhï, Abu Dàwud & al-Nasa'i)

«إِذَا شَرِبَ فِي الرَّابِعَةِ فَاقْتُلُوهُ»

"If he drinks the fourth time (after being punished each time) then kill him."[4]

«كنت نهيتكم عن ادخار لحوم الأضاحى لأجل الدافة فادخروها»

"I used to forbid you from storing away the sacrificial meat because of the large crowds. Now you may store it as you wish." (Bukhari & Muslim)

Third: Abrogation of Sunnah by the Qur'an:

The Hukm of facing Al-Quds was abrogated by the Qur'an:

وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِ

"…so turn your face in the direction of al-Masjid al-haraam." (TMQ Al-Baqarah: 144)

Also, having sexual intercourse at night was Haram for the one who fasted during the day according to the Sunnah. This was abrogated by the following saying of Allah (swt):

[4] Abu Dawud, Book 38, Number 4469

فَالْآنَ بَاشِرُوهُنّ

"So now have sexual relations with them…"(TMQ Al-Baqarah: 187)

The fast of 'Ashura was established by the Sunnah but abrogated by the Qur'an with the obligation to fast in Ramadhan.

Similarly, it was allowed to delay the prayer in the thick of battle according to the Sunnah. That is why the Messenger (saw) said on the day of Khandaq after delaying the Salah:

«حشا الله قبورهم نارا»

"May Allah fill their graves with Fire' as they prevented him from praying the Salah." (Muslim, Ahmad & Abu Ya'la)

This was abrogated by the Salat-ul-khawf (the Salah of fear) which was mentioned in the Qur'an:

وَإِذَا كُنْتَ فِيهِمْ فَأَقَمْتَ لَهُمُ الصَّلَاةَ

"When you (O Messenger Muhammad [saw]) are among them, and lead them in as-salah (the prayer)…" (TMQ An-Nisa: 102)

Fourth: It is not allowed to abrogate the Hukm established by Ijma.

This is because for a Hukm to be established by Ijma means a Hadith has not been narrated about it even though the Sahabah knew the Hadith but did not report it. They mentioned the Hukm without narrating the hadith. So for a Hukm to be established by Ijma means that there is no text for it in the Kitab and Sunnah, therefore, there is no possibility for a text to abrogate a Hukm established by Ijma.

Fifth: Abrogating the Hukm of Qiyas.

Abrogation does not occur in Hukm of Qiyas at all. This is because the recognised Qiyas is where its 'Illah is Shar'i one i.e. it is the reason of the Hukm whether it is explicit (Sareeh), implicit, deduced or through analogy. Such an 'Illah is taken from a Daleel, either from the Qur'an, Sunnah or Ijma as-Sahabah. The Qiyas remains as long as there is a daleel. It is not possible for abrogation to take place with regards to a Hukm deduced through analogy as long as the original matter exists. However, if the original matter is abrogated then there will be no Qiyas since the 'Illah ceases to exist. However, in such a case it would not be abrogation of the Hukm of Qiyas, rather it would be abrogation of the Hukm established by the Kitab, Sunnah and Ijma.

Sixth: It is not allowed for the Kitab to be abrogated by the Mutawaatir Sunnah.

Although the Mutawaatir Hadiths are Qata'i (definite) they cannot abrogate the Qur'an for the following reasons:

1. Allah (swt) says:

وَإِذَا بَدَّلْنَا آيَةً مَكَانَ آيَةٍ

"And when We change a verse in place of another." (TMQ An-Nahl: 101)

This means changing a Hukm established by an Ayah abrogates a Hukm established by another Ayah.

2. Allah (swt) says:

مَا نَنْسَخْ مِنْ آيَةٍ أَوْ نُنْسِهَا نَأْتِ بِخَيْرٍ مِنْهَا أَوْ مِثْلِهَا

"Whatever a Verse (revelation) do We abrogate or cause to be forgotten, We bring a better one or similar to it." (TMQ Al-Baqarah: 106)

The personal pronoun (We bring) refers to Allah (swt) i.e. the one who abrogates the Ayah is Allah (swt) and we know the Sunnah was brought by the Messenger (saw). This is because the wording of the Sunnah belongs to the Messenger (saw) and the wording of the Qur'an belongs to Allah. Even though the meaning of the Kitab and Sunnah are both revelations from Allah (swt), however the Sunnah is ascribed to the Messenger (saw) in terms of speech and the Qur'an is the speech of Allah (swt). Thus, the Hukm of an Ayah is abrogated only by another Ayah.

3. Allah (swt) says:

بِالْبَيِّنَاتِ وَالزُّبُرِ وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ وَلَعَلَّهُمْ يَتَفَكَّرُونَ

"And We have also sent down unto you (O Muhammad [saw]) the reminder and the advice (the Qur'an), that you may explain clearly to men what has been sent down to them." (TMQ An-Nahl: 44)

So the Messenger (saw) explains the Ayat that have been revealed but he does not abrogate them. This is because abrogation means lifting the Hukm and not giving a clear explanation (bayaan) of the Hukm.

For all of these reasons the Mutawaatir Sunnah cannot abrogate Qur'an.

So by greater reason (Min Bab awla) the Qur'an cannot be abrogated by the Ahad (singular narrations) of the Sunnah. As in addition to what we have said about the Mutawaatir Sunnah the singular narrations are Dhanni (speculative) and the definite (Qata'i) cannot be abrogated by the speculative (Dhanni). However a hadith may specify a rule mentioned in the Quran such as the specification of lashing for the unmarried fornicator as the Sunnah stipulates stoning for the married adulterer.

Similarly, the Mutawaatir Sunnah cannot be abrogated by the Ahad (singular) narrations of the Sunnah, because the Mutawaatir is stronger than the Ahad. The definite report is not removed by the speculative report.

As for those who say turning from the direction of al-Quds for the Salah was established by the Mutawaatir Sunnah. This is because the people of Quba used to pray towards al-Quds based on the Mutawaatir Sunnah but when this was abrogated when a caller sent by the Messenger of Allah (saw) came and announced that the Qibla had changed. So they turned towards the direction of the Ka'ba based on his report and the Messenger (saw) did not object. The answer to this claim is that the abrogation of facing al-Aqsa was through the Qur'an as it was mentioned previously and the caller was only informing them of what had happened i.e. he informed the people about a new Hukm Shar'i.

Sunnah

Sunnah, linguistically, means a path or a way. As a juristic term "Sunnah" has different meanings to various disciplines of the Islamic culture.

• To the Ulema of Hadith:
Sunnah refers to all that is narrated from the Prophet (saw), his acts, his sayings, whatever he has tacitly approved, and all the reports that describe his physical attributes and character.

• To the Ulema of Fiqh (Jurisprudence):
Sunnah refers to the category of Mandub or Nafilah. In this sense, Sunnah is used synonymously with Mandub. As an example, praying extra prayers or fasting extra days other than in Ramadan is Mandub or Nafilah.

• To the Ulema of Usul al-Fiqh:
Sunnah refers to another source of Shari'ah along with the Qur'an. Thus, in the usage of Usul al-Fiqh, one might say that fasting days other than in Ramadan is from Sunnah, denoting that the Sunnah has validated this ruling.

The usage of Sunnah in Usul al-Fiqh should not be confused with the Sunnah in Fiqh. In Fiqh, the term Sunnah is synonymous to Nafilah or Mandub, meaning a recommended act. In Usul al-Fiqh, it is a source for extracting rulings, and it establishes the following types of Hukm Shar'i:

• Fard: (فرض) For example, the method of praying the Salah is established from the Sunnah and not the Qur'an. The Qur'an issues the command to pray.

• Haram: (حرام) Fasting on the day of Eid is Haram and is established from the Sunnah.

• Mandub / Sunnah: (مندوب/سنـة) Fasting on Monday is Mandub and is established from the Sunnah.

• Makruh: (مكروه) Eating garlic before going to masjid is Makruh and is established from the Sunnah.

• Mubah: (مباح) At times the Prophet (saw) drank water while sitting or standing.

4.1 The Sunnah is a definitive source

Allah (swt) says in the Qur'an:

مَنْ يُطِعِ الرَّسُولَ فَقَدْ أَطَاعَ اللَّهَ

"He who obeys the Messenger has obeyed Allah." (TMQ An-Nisa: 80)

فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ

"And no, by thy Lord, they would never believe until they refer to you in the issues and disputes that are between them" (TMQ An-Nisa: 65)

وَمَا يَنْطِقُ عَنِ الْهَوَى إِنْ هُوَ إِلَّا وَحْيٌ يُوحَى

"He does not speak of his own desires and whims; indeed he is inspired by Wahy (revelation)." (TMQ An-Najm: 2 & 3)

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا

"What the Messenger has given you then take it, and what he prohibits then abstain from it." (TMQ Al-Hashr: 7)

وَالزُّبُرِ وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ

"And we have revealed to you (O Muhammad) the Dhikr, for you to explain it to the people." (TMQ An-Nahl: 44)

قُلْ إِنْ كُنْتُمْ تُحِبُّونَ اللَّهَ فَاتَّبِعُونِي يُحْبِبْكُمُ اللَّهُ

"Say (O Muhammad): If you love Allah then follow me, and Allah will love you." (TMQ Al-Imran: 31)

The Messenger of Allah (saw) said:

«يوشك أن يقعد الرجل منكم على أريكته يحدَّث بحديثي فيقول: بيني وبينكم كتاب الله، فما وجدنا فيه حلالاً استحللناه، وما وجدنا فيه حراماً حرّمناه، وإن ما حرّم رسول الله كما حرّم الله»

"**One of you who while reclining on his chair is quoted a Hadith from me, and he says to the person who quoted the Hadith, 'we have the Book of Allah (Qur'an), so what we find in it from what is Halal we will take it as Halal, and what we find in it that is Haram, we'll treat as Haram.' (The Prophet (saw) continued...) But whatever the Messenger of Allah has made Haram, it is like that thing which Allah has made Haram."** [5]

The narration of Jabir adds:

« مَنْ بلغه عنّي حديث فكذّب به، فقد كذب ثلاثة: الله، ورسوله، والذي حدث به »

"Whosoever comes to know a hadīth about me and he rejects it. He has rejected three: Allah, His Messenger and the one who informed him of the hadīth."

Abdul-Aziz reported from Amr bin Amr - the freed slave of Al Mutallib bin Hantab that the Messenger of Allah (saw) said:

[5] Al-Hakim, Baihaiqi, Abu Dawud, Ahmad and many others.

« ما تركت شيئا مما أمركم الله تعالى به إلا وقد أمرتكم به ولا تركت شيئا مما نهاكم عنه إلا وقد نهيتكم عنه »

"I have left nothing concerning which Allah has given you an order without giving you that order; nor have I left anything concerning that which He has prohibited without giving you that prohibition."[6]

These Ayah and Hadith establish without any doubt that both the Qur'an and the Sunnah are from Allah (swt) and consequently both are sources for legislation. The Sunnah is a very fundamental element in Islam and knowing the Sunnah is a prerequisite for understanding and applying the Qur'an.

4.2 Types of Sunnah

A. Qawli (قولي) (verbal):
Consists of the sayings of the Prophet (saw) on any subject, for example: **"He who cheats is not one of us."** (Ahmad)

B. Taqriri (تقريري) (Approval):
Consists of the approval of the Prophet (saw). If something was done in front of him (saw) and he (saw) didn't disapprove it, then it is considered an approval. As an example, the Prophet (saw) approved the way women prayed in the mosque; separate from the men, but in the same room.

C. Fa'eli (فعلي) (Actions):
Consists of the Prophet (saw)'s deeds and practices, such as the way he (saw) used to pray or perform Hajj.
The following paragraphs address the actions of the Prophet (saw) and their legislative impact. The actions of the Messenger (saw) can be divided into three parts. The first section consists of those actions, which were natural to him as a human being, secondly, actions, which were specific to him as a Prophet (saw), and thirdly, actions, which carry legislative impact.

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[6] Kitab Al-Umm, Imam Shafi'i

1. Actions as part of Prophet (saw)'s Nature

These actions include the way he stood, sat, ate or drank. For example it is reported that when he (saw) walked and wanted to turn his head to another direction, he (saw) would turn his entire body. This type of action has no legislative impact, except in certain cases when he (saw) recommended doing a particular action. Then such an action would be considered Mandub.

For example, there is a Hadith telling a Sahabi to eat with his right hand, which shifts the action, initially falling under a Mubah (permissible) category, to a Mandub (recommended) category. The Sunnah also excludes specialised and technical knowledge, such as medicine and agriculture because it is not held to be part of the function of Prophethood.

2. Actions Specifically for the Prophet (saw)

Allah (swt) has sent the Messenger (saw) with rules that are specifically related to him (saw) only. Some examples of these rules are:

- He (saw) was ordered to pray the Tahajjud and the Ishraq Salah as Fard on him (saw).
- He (saw) was allowed to continue his (saw) fasting into the night.
- His (saw) marriage contracts did not have to include a dowry (Mahr).
- His (saw) wives could not remarry.
- He (saw) was allowed to marry more than four wives at a time.

Whoever performs any of these actions is sinning because these actions are exclusively for the Prophet (saw).

3. Actions of the Prophet (saw) Carrying Legislative Consequences.

The kinds of actions, which carry legislative consequences, are of three types:

a) The action of the Messenger of Allah (saw), which provides an explanation for a text.

If this explanation was for a rule or text that was obligatory, then the explanation also becomes obligatory. If the explanation was for a rule that was Mandub, then the explanation also becomes Mandub. Generally speaking, the explanation takes the same status as the rule. Some examples will clarify this principle.

The Qur'an obligates the establishment of the Salah. Any explanation of performing the Salah by the Messenger (saw) is thus also an obligation. For example, he (saw) recited Surah Fatihah while standing and always recited the Surah during each Rakah. Except for people who are excused due to physical disabilities, reciting Surah Fatihah must be done while standing in Fard prayers.

Allah (swt) ordered the Messenger (saw) to rule the people with what was revealed to him (saw). Thus, the way the Messenger (saw) ruled the people (by Islam) is an obligation. Some argue that the Messenger (saw) did not leave details about the ruling, rather he (saw) left general outlines, and that it is left to our intellect to innovate and initiate new forms of ruling. Many Muslims believe this point and are using democracy and parliamentary processes to rule the Muslims.

However, since any order that is addressed to the Messenger (saw) is also addressed to all Muslims, the order to rule by the revelation is an order to all Muslims. The Qur'an warns us that those who do not rule by Islam are Zalim, Fasiq or Kafirs.[7]

When we study the Seerah, we find an abundance of details related to ruling by Islam. For example, the Messenger's (saw) saying that:

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[7] Al Ma'idah: 44 to 47.

«كانت بنو إسرائيل تسوسهم الأنبياء، كلما هلك نبي خلفه نبي، وإنه لا نبي بعدي، وستكون خلفاء فتكثر، قالوا فما تأمرنا قال: فوا ببيعة الأول فالأول، وأعطوهم حقهم، فإن الله سائلهم عما استرعاهم»

"The children of Israel were sent Prophets. Every time a Prophet died or was killed, another Prophet would succeed him. However, there will be no Prophet after me and there will be Khulafa and they will be many. So the Sahabah asked, 'What should we do?' He said, fulfil the Bay'ah to the first, the first and give them their rights for Allah (swt) will hold them accountable for their responsibilities." (Muslim)

In addition, the Prophet (saw) said that there should be only one Khaleefah:

«إذا بويع لخليفتين فاقتلوا الآخر منهما»

"If the Ba'yah is given to two Khaleefahs, then kill the latter one." (Muslim)

He (saw) also told us that whoever backs away from his Bay'ah, Allah (swt) will be angry with him. The Seerah also defines the pillars of the State's ruling system - it being made up of the Head of State, Delegates and Executive Representatives of the Head of State, Governors, Provincial Governors, Amir of Jihad, Judges of the Judicial Branch, the Majlis of the Ummah (Consultation Assembly) and the Administrative Council.

Since Islam detailed these aspects as an explanation of the order to rule, this explanation takes the same status as the order and is thereby mandatory for us to implement. This explanation should refute any claim by any person that utilizing a democratic, parliamentary, republican, monarchical, or dictatorial method of ruling is within the boundaries of Islam.

Allah (swt) ordered the Messenger (saw) to carry the Islamic Da'wah. Allah (swt) says:

قُلْ هَذِهِ سَبِيلِي أَدْعُو إِلَى اللَّهِ عَلَى بَصِيرَةٍ أَنَا وَمَنِ اتَّبَعَنِي

"Say (O Muhammad): this is my way (sabeel), I and whoever follows me call and invite to Allah..." (TMQ Yusuf: 108)

And He (swt) also says:

ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ

"Invite to the way of your Lord with Hikmah, and a magnetising speech (maw'ithatul-hasanah), and debate with them with what is better (ahsan)." (TMQ An-Nahl: 125)

These Ayahs obligate us to carry the Islamic Da'wah the way the Messenger (saw) did. The Messenger of Allah (saw) performed the Da'wah as a part of a group or party. He (saw) did not compromise any rule or letter in Islam, he (saw) never adopted the principle of "If you can't beat them, join them."

The Messenger (saw) and his Companions (ra) confronted the Makkahn society, attacking their 'Aqeedah (beliefs), laws, rulers and concepts, always proposing Islam as the only alternative.

This group never engaged in any material struggle such as in terrorist actions, military actions, or sports training. Their struggle involved a political struggle with the leaders of the Makkahn society like Abu Jahl, Abu Lahab, and Walid bin al-Mughirah and the ideological struggle of addressing the practices of cheating in the scales, burying the daughters alive, worshipping idols, etc. Consequently, carrying the Islamic Da'wah today cannot be done but with the same prototype in mind.

Unfortunately, many movements are trying to patch and mend the illegal Kufr regimes that are ruling over them, and others have joined the cabinets of these regimes, or have participated in the system. These actions are invalid since the actions of the Messenger (saw) in explaining the Da'wah are the only actions that are binding on the Muslims, based on the principle that if the rule is an obligation, then the explanation of the rule is also an obligation.

b) The actions of the Prophet (saw), which fall under the category of Mandub or Nafilah.

Examples of such actions are fasting 6 days during the month of Shawwal, making special Dhikr on occasions, and praying Sunnah Salah.

Following the Uswah (example) of the Messenger (saw) means to perform the action in the same way he (saw) performed it. So, if he (saw) did an action as Mandub then we must follow him (saw) in doing that action as Mandub. If the action is done as a Fard, then the emulation of that action has to be done as a Fard.

We cannot switch and do any action that he (saw) did as a Fard and make it into a Sunnah, and conversely, we cannot change a Sunnah to a Fard. There are, however, some who feel that actions falling under this category are Fard (mandatory). This opinion is arrived at without a deep and comprehensive study of all the evidences and Daleel.

c) The actions of the Prophet (saw), which fall under the category of Mubah.

Since the actions are permissible, they result in neither attaining the pleasure nor the displeasure of Allah (swt).

An example of such an action is the time duration of ten years for the treaty of Hudaybiah. The ten years is not a fixed or set limit for treaties to be signed by the Khaleefah. Consequently, it is Mubah for the Khaleefah to sign a treaty for five or fifteen years. Another

example is digging the ditch in the Battle of the Ditch. This tactic was used to defend Madinah. So today, digging the ditch does not have to be done.

4.3 Basic Terms in Hadith

- **Sanad**: (سنـد) A chain of reporters leading back to the Prophet (saw).
- **Tabaqah**: (طبقـة) A class of reporters in the same generation, i.e. Sahabah, Tabi'een.
- **Marfu'**: (مرفـوع) A Hadith whose Sanad leads to the Prophet (saw).
- **Mawquf**: (موقـوف) A Hadith whose Sanad ends with a Sahabi.
- **Mursal**: (مرسـل) A Hadith leading to the Prophet (saw) but missing the name of the Sahabi who reported it.
- **Qudsi**: (قدسـي) A Hadith whose Sanad leads to Prophet (saw) and the Prophet (saw) is reporting it from Allah (swt).

The report of Hadith Qudsi can begin in one of two ways:

a) The Prophet (saw) says reporting from Allah (swt).
b) Allah (swt) has said as reported by His Messenger (saw).

4.3.1 Types of Hadith:

Different types of Ahadith exist due to the method of transmission, number of reporters in each class, and the authenticity of the Hadith.

Methods of Transmitting a Hadith	
Mutawatir / Tawatur	Khabar Ahad
(Transmitters are greater than 5)	(Transmitters are less than 5)

Mutawatir / Tawatur: a Daleel transmitted by an indefinite number of people. Due to the large number of people reporting the Daleel and their diversity of residence, reliability, and conviction, it is inconceivable that this Daleel could be fabricated.

The minimum number of transmitters that are required to classify a Daleel as Mutawatir is generally five. However, some scholars may have more stringent criteria. The character of the reporters narrating Mutawatir Ahadith has to be noble.

Ahad: (آحاد) Riwayah Ahad is a number less than the Mutawatir.

Reporters in each class for Khabar Ahad		
(Applies to Khabar Ahad only!)		
Mashoor	'Aziz	Gharib

Mashoor: (مشهـور) A Hadith reported by at least three individuals in every class (Sahabah, Tabi'een, etc.).

'Aziz: (عزيز) A Hadith reported by at least two individuals in every class.

Gharib: (غريـب) A Hadith reported by only one individual in one or more classes.

Authenticity of the Reporters for Khabar Ahad (Applies to Khabar Ahad only)						
Sahih (صحيح)		Dha'eef (ضعيـف)			Hasan (حسن)	
▼						
Mu'alaq معلـق	Ash-Shaath ألشاذ	Mu'allal معلـل	Mu'addal معـدل	Munkar منكــر	Maw du' موضــوع	Munqati منقطــع

Sahih:

A Hadith narrated by an 'Adl (not known for misconduct) and Daabit (maintains accuracy of the report) person from another person of similar qualities until the end of the report. The report should also exclude any Shudhudh (disagreement with other credible reporters).

Hasan:
It has two definitions:

a) A Hadith, which meets the requirements of Sahih to a lesser degree.
b) A Hadith, which is acceptable by the majority of the Fuqaha.

Dha'eef:
A weak Hadith which does not meet the requirement of either the Sahih or the Hasan Hadith, it can be one of the following:

Mu'alaq:	A Hadith which is missing one or more reporters either at the beginning of the Isnad, in the middle or in the end.
Mu'addal:	Hadith which is missing two or more consecutive reporters.
Munqati:	A Hadith which has interruption in the class.
Ash-Shaath:	A Hadith in which one credible reporter reports something that disagrees with other credible reporters.
Mu'allal:	A Hadith whose Sanad seems to be fine, but due to some reasons discovered by scholars, it is discredited.
Munkar:	A Hadith in which non-credible reporters convey a message, which is in disagreement with what, was reported by credible reporters.

Mawd'u: A fabricated Hadith.

4.4 Reconciling a perceived conflict between two or more Ahadith

Some have raised the point that there often appears to be conflicting Ahadith on an issue. As a result, they have reached to the conclusion that we have to reject both of these seemingly conflicting Ahadith and others have even declared that the entire Sunnah must be rejected. Both of these approaches are completely wrong and absurd. However, one may wonder what should be done if there seems to be a conflict between two Ahadith?

Firstly there can be no conflict whatsoever between the sayings and / or actions of the Messenger (saw) except in such cases of abrogation. The Messenger (saw) said:

«كنتُ نَهيتُكم عن زيارة القبور أَلاَ فزُورُوها»

"I used to prohibit you from visiting the graveyards, now go and visit them." (Muslim, Abu Dawud, An-Nisai & Al-Hakim)

In this Hadith the Prophet (saw) used to prohibit Muslims from visiting the graveyards, however this rule is abrogated by the last phrase of the Hadith.

The rejection of the Sunnah cannot be claimed due to the cases of abrogation because the concept of abrogation is part of Islam. Also, in cases where abrogation occurs in the Qur'an, the Ayah is not abrogated, rather the rule, which is extracted from the Ayah, is abrogated. Consequently, one cannot delete an Ayah from the Qur'an because its rule is abrogated.

Secondly, sometimes the Sahabah (ra) reported a variety of actions by the Prophet (saw). For example, there are reports that he (saw) made Salah with his (saw) hands on his (saw) chest, and others said

his (saw) hands were on his midsection. This doesn't indicate a conflict, rather, it illustrates that he (saw) was seen doing both and that either action is permissible during the Salah.

Thirdly, if there is a seeming conflict between the speech and action of the Messenger (saw), then this action is specifically for him (saw), while the text or the statement is for the Muslims. An example of this is that he (saw) used to continuously fast day and night, while he (saw) prohibited the Sahabah (ra) from this practice.

Examples of some Ahadith in which there seems to be a conflict:

Regarding seeking the help of non-Muslims, we find the following Ahadith:

In one situation Aisha bint Abu Bakr (ra) reported:

«خرج النبي ρ قبل بدر فلما كان بحرّة الوبرة أدركه رجل قد كان يذكر منه جرأة ونجدة، ففرح أصحاب الرسول ρ حين رأوه، فلما أدركه قال لرسول الله ρ : جئت لاتبعك وأصيب معك، فقال له رسول الله ρ : تؤمن بالله ورسوله قال: لا، قال: فارجع، فلن أستعين بمشرك، قالت: ثم مضى حتى إذا كُنّا بالشجرة أدركه الرجل، فقال له كما قال أول مرة، فقال له النبي ρ كما قال أول مرة، قال: فارجع فلن أستعين بمشرك، قال: ثم رجع فأدركه بالبيداء، فقال له كما قال أول مرة تؤمن بالله ورسوله؟ قال: نعم. فقال له رسول الله ρ : فانطلق»

"That when the Prophet (saw) was on his (saw) way to the battle of Badr, a very well known courageous man joined him at a place called Harratul Wabra. So the Sahabah (ra) were very pleased to see him. When the man saw the Prophet (saw), he said, "I have come to fight with you and to get a share of the war booty." So the

Prophet (saw) asked him, **"Do you believe in Allah (swt) and His Messenger (saw)?**" The man replied, "No". The Prophet (saw) told him to return back since we (the Muslims) do not seek help from the Mushriks. The Prophet (saw) proceeded on his way to Badr until he reached Al-Shajara. The man came again and told the Prophet (saw) what he had told him (saw) earlier. The Prophet (saw) asked him the same question he (saw) had asked the man before and then told him to return back since he (saw) does not seek help from the Mushriks. As a result, the man returned back. The man joined the Prophet (saw) again at Baida'ah. So the Prophet (saw) asked him again, **"do you believe in Allah (swt) and His Messenger (saw)."** The man replied, "Yes", and then the Prophet (saw) told him to **hurry up and go fight**." (Muslim & Ahmad)

On another occasion, Al-Bayhaqi said: The authentic (sahih) is what Al-Hafidh Abu Abdullah informed us via a chain leading to Abu Hameed as-Sa'idi who said:

«خرج رسول الله ρ حتى إذا خلَّف ثنيَّة الوداع إذا كتيبة قال: من هؤلاء؟ قالوا بني قينقاع وهو رهط عبد الله بن سلام قال: وأسلموا؟ قالوا: لا، بل هم على دينهم، قال: قولوا لهم فليرجعوا، فإنّا لا نستعين بالمشركين»

"It is reported that the Prophet (saw) was on his (saw) way o the battle of Uhud until he reached Dhanniyatul Wada'a. Here, he (saw) met a regiment and asked, who are they? The Sahabah (ra) told him (saw) they were from Banu Qaynuqa'a, the faction of Abdullah Bin Salaam. So the Prophet (saw) asked them, will you become Muslims. They declined the offer. As a result, the Prophet (saw) ordered them to leave saying **'We do not seek help from the Mushriks.'** Thus, they became Muslims." (Al-Baihaqi)

In other situations, the Messenger (saw) sought the help of a Jewish individual of Khaybar and even allowed a Mushrik to fight with him (saw). These Ahadith were used to justify the presence of the American troops in Saudi Arabia during the Gulf war.

However, they have been misquoted and misapplied. By scrutinising these Ahadith, one can see that the Messenger of Allah (saw) used to sometimes allow only non-Muslims to fight with him (saw) as individuals. While, he (saw) refused the help of non-Muslim groups or institutions under their own banner. If a group comes to fight under their own banner, such as under the American flag, Muslims cannot accept their assistance.

Muammar Gaddafi, the ruler of Libya exploits the idea of contradiction in the Hadith to reject the entire Sunnah. He claims that Ali bin Abi Talib (ra) was told by the Messenger of Allah (saw) that he (ra) would be one of the people of Paradise. He also uses another Hadith that says that if two Muslims meet each other with swords drawn, then both of them are in fire. Since Ali (ra) met Mu'awiyyah in battle, Gaddafi argues, this Hadith would apply to Ali (ra) and thereby contradict the glad tidings given to Ali (ra) about being from the people of the paradise. Based on this supposed contradiction, Gaddafi rejected the entire Sunnah.

In fact, Gaddafi took this second Hadith out of context. The second Hadith is talking about two groups fighting out of Fitnah or Kufr, such as fighting for the sake of nationalism, while Ali (ra) was fighting for Islam. The Qur'an tells us that if two groups are fighting, then make peace between them, and if one group continues to overstep the bounds, then it orders all parties to band together to deal with the rebel group.

Since Ali (ra) was the legitimate Khaleefah and Mu'awiyyah (ra) rebelled, Ali (ra) negotiated with Mu'awiyyah (ra) and then fought him to stop the rebellion. Ali (ra) was acting on a Hukm Shar'i and this cannot be viewed by anyone as an act that put Ali (ra) in the fire.

Consequently, there is absolutely no contradiction in these two Ahadith. There is no contradiction or conflict between any two

Hadith except in cases of abrogation, in which the ruling from the latest Hadith is taken.

4.5 The Application of the Sunnah

The Sunnah can be applied in five ways:

A. Sunnah can explain a word which is not explained in the Qur'an

For example, the Qur'an says:

وَأَقِيمُوا الصَّلَاةَ

"Establish the Salah" (TMQ Al-Baqarah: 43)

The Qur'an does not explain or provide any details regarding the term, "Establish the Salah." However, the Sunnah explains the details pertaining to the term "Establish the Salah." The Messenger of Allah (saw) says:

«صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي»

"Pray as you see me pray"

The Messenger (saw) used to observe people pray and would correct them in the areas of the Salah where they made mistakes. The issue of explanation and clarification also extends to the rules of Hajj, Zakah, Jihad, and others. In summary, the Qur'an may mention a term without providing any details, but Sunnah plays the role of explaining these terms.

B. Qur'an mentions a general term, which could be applied to any person, while the Sunnah further specifies the term and forms another rule.

For example, the Qur'an says:

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِئَةَ جَلْدَةٍ

"The man and woman who commit Zina, flog each of them with one hundred lashes." (TMQ An-Nur: 2)

This rule can be applied to any male or female who is found guilty of Zina. However, the Messenger (saw) stoned married men and women who committed Zina. Thus, in this case, he (saw) singled out the married man and woman and gave them the rule of stoning to death for Zina.

As an example, Muslim extracted in his Sahih on the authority of Ibnu Omar that the Messenger of Allah (saw) stoned to death a Jewish man and a Jewish woman for committing adultery.

C. A rule may be mentioned in the Qur'an without any restrictions, but the Sunnah places restrictions on the rule.

For example, the Qur'an says:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً

"The male and female thief, cut their hands" (TMQ Al-Ma'ida: 38) There is no restriction placed on this rule in the Ayah, which simply states that anyone found guilty of stealing should have his hand cut. However, the Sunnah places certain restrictions on the application of this punishment. Some of which are that the stolen property must equal a Nisab, which amounts to one quarter of a Dinar in gold. Also, the property must be stolen from a place where such property wealth is usually kept.

It has to be kept under average protection, which is relevant to the people and the property itself. For example, if the jewellery is left in the open instead of a locked up place, then the one who steals it will not have his hand cut off, even though the action is still

Haram. Another example is if the sheep or horses are not kept in a barn or stable, then stealing will not call for the implementation of the Hadd, even though stealing them is Haram.

D. An original rule in the Qur'an, which is explained, has neither restrictions nor exceptions, but the Sunnah adds new items to the original rule.

For example, the Qur'an says:

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُمْ مِنَ الرَّضَاعَةِ

"Forbidden to you are your mothers, daughters, paternal and maternal aunts, nieces, foster mothers and sisters, mothers-in-law, and step daughter...." (TMQ An-Nisa: 23)

«نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنْ يُجْمَعَ بَيْنَ الْمَرْأَةِ وَعَمَّتِهَا وَبَيْنَ الْمَرْأَةِ وَخَالَتِهَا»

The Sunnah added that: **"No woman can be married to a man who is already married to her sister or her maternal / paternal aunt."** (Bukhari & Muslim)

Men are also prohibited from marrying the women who breast-fed them. Thus, the Sunnah adds extra items to the Qur'anic rule.

E. A rule originating from the Sunnah and not the Qur'an.

For example the Messenger (saw) said:

«الناس شركاء في ثلاث الماء والكلأ والنار»

"People are partners in three things. The water, the graze (kela), and the fire (includes power resources)." (Abu Dawud)

This Hadith established rules related to public ownership of the natural resources in the Islamic State. The topic of public ownership in the State was never explicitly addressed in the Qur'an.

Ijma' as-Sahabah

5.1 The meaning of Ijma'

Ijma' is the verbal noun of the Arabic word Ajmaa, which has two meanings: 1) to determine, 2) to agree upon something.

There are many types of Ijma' discussed in the books of Usul al-Fiqh. Some of these are; Ijma' al Ummah, Ijma' al Mujtahideen, Ijma' ahlel Bayt, Ijma al Madinah and Ijma' as-Sahabah. Ijma' as-Sahabah is the only one that is definitive and agreed upon.

If the Sahabah (ra) after the death of the Prophet (saw) were to agree unanimously upon a solution to a problem without any dissent amongst each other, in the absence of a ruling from the Qur'an and Sunnah, then this agreement is considered to be a Daleel. This agreement must have been based upon some teaching of Mohammed (saw) of which they all knew, but which did not reach us directly in the form of Hadith. Therefore, Ijma' as-Sahabah is an indication of Sunnah itself.

5.2 Examples of Ijma' as-Sahabah

An example of Ijma' as-Sahabah is the priority, which must be given to the appointment of a Khaleefah for Muslims. The Sunnah of the Prophet (saw) informs us that the dead must be buried quickly and it is forbidden for those responsible for the burial to delay the burial on account of other things. Yet when the Prophet (saw) died, the Companions delayed his (saw) burial until they had selected a Khaleefah from among themselves.

Before the burial arrangements were completed, the Sahabah (ra) had gathered in the place of Banu Sai'da and proceeded to select the Khaleefah. After discussion of the matter, all agreed to give Bay'ah (oath of allegiance) to Abu Bakr (ra), after which they buried the Prophet (saw). None of them objected to the delay of the

burial. The unanimous agreement of the Sahabah (ra) regarding this action is a Daleel for us about the importance of appointing the Khaleefah for Muslims, even more vital than the burial of the Prophet (saw) himself.

Al-Haythami (d. 1405 CE) said, "It is known that the Sahabah (ra) consented that selecting the Imam after the end of the era of Prophethood was an obligation (Wajib). Indeed they made it (more) important than the (other) obligations whilst they were busy with it over the burial of the Prophet (saw)."[8]

The reputed scholar Al-Taftazani (d. 1389 CE) said, "There is Ijma (consensus) that appointing an Imam is wajib (obligatory)…The adoption (i.e. correct position) is that it is obligatory upon the servants by textual evidence because of the saying of the Messenger (saw):

«مَنْ مَاتَ بِغَيْرِ إِمَامٍ مَاتَ مِيتَةً جَاهِلِيَّةً»

"Whoever dies not having known the Imam of his time, dies the death of the days of Jahiliyyah (Ignorance)."

Also, the Ummah agreed that this was the most important duty following the death of the Messenger (saw), so important in fact that they considered it more important than the matter of his burial, and so also has it been after the death of each Imam. And they must appoint someone, for so many Shari'ah obligations depend on this duty."[9]

Another example of Ijma' as-Sahabah is when Umar (ra) on his deathbed specified a time limit of three days to appoint the next Khaleefah after him, he even ordered for those amongst the council of six he nominated to be killed if they disputed. All of the Sahabah consented to this. The six Umar appointed in the council

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[8] Al-Haythami, Sawaa'iq ul-haraqah, p. 17

[9] Al-Taftazani, Sharh al-Aqa'id al-Nasafiyyah (Commentary of Nasafi's Essay on the Creed), p. 142-143, Musnad Ahmad, Hadith No. 16271

were all senior Sahabah who had been promised paradise by the Prophet (saw), they included Ali b. Abi Talib, Uthman b. Affan, Sa'ad b. Abi Waqqas, Abdur Rahman ibn Awf, Az- Zubayr b. Al Awwam, and Talha b. Ubaydullah.

The renowned scholar and historian Ibn Jarir al-Tabari (838–923 CE) as well as others have reported the narrations about what occurred when Umar (ra) was wounded, Umar (ra) said: "O group of Muhajireen! Verily, the Apostle of Allah died, and he was pleased with all six of you. I have, therefore, decided to make it (the selection of Khaleefah) a matter of consultation among you, so that you may select one of yourselves as Khaleefah. If five of you agree upon one man, and there is one who is opposed to the five, kill him. If four are one side and two on the other, kill the two. And if three are on one side and three on the other, then Abdur Rahman ibn Auf will have the casting vote, and the Khaleefah will be selected from his party. In that case, kill the three men on the opposing side. You may, if you wish, invite some of the chief men of the Ansar as observers but the Khaleefah must be one of you Muhajireen, and not any of them. They have no share in the Khilafah. And your selection of the new Khaleefah must be made within three days."[10]

5.3 Daleel indicating the Authority of Ijma' as-Sahabah

The Sahabah (ra) were the group who had the best access to the revelation and were most mindful of holding fast to the revelation in their actions. Their Ijma' is a proof for the following two reasons: First, Allah (swt) in the following Ayah praises them as a community, not just as individuals.

[10] Tareekh (History) of Al Tabari, Vol 3, p. 294-295

وَالسَّابِقُونَ الْأَوَّلُونَ مِنَ الْمُهَاجِرِينَ وَالْأَنْصَارِ وَالَّذِينَ اتَّبَعُوهُمْ بِإِحْسَانٍ رَضِيَ اللَّهُ عَنْهُمْ وَرَضُوا عَنْهُ وَأَعَدَّ لَهُمْ جَنَّاتٍ تَجْرِي تَحْتَهَا الْأَنْهَارُ خَالِدِينَ فِيهَا أَبَدًا ذَلِكَ الْفَوْزُ الْعَظِيمُ

"The Vanguard (of Islam) - the first of those who forsook (their homes) and those who gave them aFid (the Muhajireen and the Ansar) and also those who follow them in good deeds, Allah is well pleased with them and they with Allah. And Allah has made ready with them gardens underneath which rivers flow and that will be their abode forever eternally, this their supreme triumph." (TMQ At-Taubah: 100)

This compliment is given to the Sahabah (Muhajireen & Ansar) for the sole reason of having been the Sahabah (ra). However, the compliment for others is due to the fact that they followed the footsteps of the Sahabah (ra). This means that the original compliment is for the Sahabah (ra). The followers are not complemented but for following the Sahabah (ra).

Therefore, it can be concluded that the meaning of the Ayah is confined to the Sahabah (ra) only. Any group of people whom Allah (swt) compliments in such a manner, the truthfulness of what they agree on is affirmed.

Second, doubt in their trustworthiness leads to doubt in Islam. The Sahabah (ra) were the generation that transmitted the Qur'an and narrated the Hadith. Our entire Deen has been conveyed to us through the vehicle of this group. This group was the means by which Allah (swt) chose the Qur'an to be compiled and preserved. Allah (swt) has promised to preserve this scripture through them. Allah (swt) says:

لَا يَأْتِيهِ الْبَاطِلُ مِنْ بَيْنِ يَدَيْهِ وَلَا مِنْ خَلْفِهِ تَنْزِيلٌ مِنْ حَكِيمٍ حَمِيدٍ

"Falsehood cannot come at it (Qur'an) from before it or from behind it. It is a revelation from the Wise, the Owner of Praise" (TMQ Fussilat: 42)

The important point to remember is that Ijma' as-Sahabah is not the personal opinions of the Sahabah (ra) on any technical issue. Rather, it is their agreement on specific things with regard to its rule in Islam, i.e. an agreement on a Shar'i opinion.

The Sahabah (ra) would not agree that a certain thing is Islamically permitted or forbidden without knowing whether that action was approved or disapproved by the Prophet (saw). However, the Hadith in this regard is not narrated to us, instead its rule is conveyed by the total agreement of the Sahabah (ra). The Ulema are in agreement that Ijma' as-Sahabah is a binding proof.

As with Hadith, Ijma as-Sahabah can be Qata'i or Dhanni in transmission and meaning. Its reports are mentioned in the books of Hadith and Tareekh (history) which are compiled by Isnad (chains of narration). A chain of narration relating to the agreement of the Sahabah maybe mentioned in a book of Hadith like Sahih al-Bukhari, a book of history like the Tareekh of Al-Tabari or a book of Fiqh like Kitab al-Umm of Shafi'i. As with Ahadith, Mujtahideen look at the strength of the narration to determine its authenticity.

5.4 Who is a Sahabi?

There are two definitions of a Sahabi:
1. A Muslim who saw the Prophet (saw).
2. A Muslim who lived with the Prophet (saw) for one or two years or participated in one or two Ghazwaat (military expeditions led by the Prophet [saw]).

The latter definition was reported by the famous scholar of the Tabi'een, Said bin al-Musayeb and is stronger. It has been narrated he said, "It is essential that someone has companionship with the

Prophet (saw) for one or two years, or has gone out with him on one or two battles."

Shu'ba reported from Musa al-Sibillani - whom he spoke appreciatively about - that he said: "I said to Anas bin Malik (ra). Are there any companions of the Messenger of Allah (saw) left other than you? He said: There are still many Arabs who saw him. As for his companions, no!"

Imam al-Mazini said in his book Sharh ul-Burhan, "We do not mean by Sahabah those who met him for a day or two, or those who attended him for some business and then left, we mean those who followed him, helped him and were guided by the light that Allah (swt) revealed to him (saaw), those are the ones to attain felicity."

Qiyas

6.1 The meaning of Qiyas

The linguistic meaning of Qiyas is means estimation, measuring or ascertaining the length, weight, or quality of something, which is why scales are called miqyas. As a juristic term Qiyas the majority of Ulema have defined Qiyas as, **'the application to a new case (far'), on which the law is silent, of the ruling (Hukm) of an original case (asl) because of the effective reason ('Illa) which is in common to both.'**[11]

The following is an example of Qiyas:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ ذَلِكُمْ خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ (9)
فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ وَاذْكُرُوا اللَّهَ كَثِيرًا لَعَلَّكُمْ تُفْلِحُونَ

"O you who have attained faith! When the call to prayer is sounded on the day of congregation (Friday), hasten to the remembrance of Allah, and leave all worldly commerce: this is for your own good, if you but knew it. And when the prayer is ended, disperse freely on Earth and seek to obtain Allah's bounty; but remember Allah often, so that you might attain to a happy state!" (TMQ al-Juma': 9-10)

The Ayah mentions that, when the call to prayer is given, one should disengage from all worldly commerce. The Ayah doesn't mention to stop such acts as eating, resting, or anything else other than conducting business. The Ayah mentions that when the prayer

[11] Amidi, Ihkam, III, 186

is over, disperse and seek Allah's bounty. This means that there is a reason to leave the commerce, being that if we do not, then we will be preoccupied and will forget the prayer.

The application of Qiyas for this example would be for any other activity besides commerce. This is because the 'Illah (missing the Juma' prayer) occurs due to these activities as well. Therefore, working, playing, eating etc. are prohibited in the time of Juma' because all of these activities prevent Muslims from performing the Juma' prayer.

6.2 Daleel indicating the Authority of Qiyas

The evidence that Qiyas is a source of Shar'iah is that the 'Illah is based upon or derived from a Shari' text. These Shari' texts are the Quran, the Sunnah, or Ijma' as-Sahabah. These three have been proven as definitive sources of Shari'ah upon which no one can disagree upon. Therefore, the evidence that the 'Illah exists in the text in general is definitive (Qata'i) and this is also the case for Qiyas. When a text mentions a reason for a rule, extending this rule to any other issue having the same reason is considered another application for the text of the Ayah or Hadith.

The Prophet (saw) demonstrated Qiyas and considered it as a Shari' Daleel. The Sahabah followed him in this regard, and they also considered Qiyas as a Shari' Daleel to extract rules. The Prophet (saw) said to Mu'adh and Abu Musa al-Ashari when he appointed them as judges in Yemen:

«بَعَثَ مُعَاذاً وَأَبَا مُوسَى إِلَى الْيَمَنِ قَاضِيَيْنِ، كُلّ وَاحِدٍ مِنْهُمَا عَلَى نَاحِيَةٍ، فَقَالَ لَهُمَا: بِمَ تَقْضِيَانِ؟ فَقَالاَ: إِذَا لَمْ نَجِدِ الْحُكْمَ فِي الْكِتَابِ وَلاَ السُّنَّةِ قِسْنَا الأَمْرَ بِالأَمْرِ، فَمَا كَانَ أَقْرَبَ إِلَى الْحَقِّ عَمِلْنَا بِهِ، فَقَالَ عَلَيْهِ الصَّلاَةُ وَالسَّلاَمُ: أَصَبْتُمَا»

"What will you judge with?" They said, **"If we do not find the rule in the Book or the Sunnah, we will compare the unknown**

issue with the known issue, and we will apply it." (Ihkam of Amidi)

The Prophet (saw) also demonstrated Qiyas in the following Hadith:

«يا رسولَ الله، إنَّ فريضةَ اللَّهِ في الحجِّ أدركتْ أبي شيخاً كبيراً، لا يستطيعُ أن يَثْبُتَ على الرّاحِلة، أَفَأَحُجُّ عنه؟ قال لها: أرأيتِ لوْ كانَ على أبيكِ دَيْنٌ أَكُنْتِ قاضِيَتَه؟ قالت: نعم. قال: فَدَيْنُ اللَّهِ أَحَقُّ بالقَضاء»

The Messenger (saw) said to a Sahabiyah when she asked regarding making Hajj on behalf of her father, **"If your father owed a debt and you paid it for him, would that suffice?"** She said, "Yes." He said, **"The same is for the debt of Allah."**[12]

In order to instruct the Muslims, the Prophet (saw) showed the Muslims how to compare the debt owed to Allah to that owed to a human being, such that paying it back fulfills the obligation. Thus, the rule confirms the acceptance of the settlement of the debt. On the other hand, the rule of the known Hukm may be one of negation. For example, Umar (ra) asked the Prophet (saw) regarding whether or not the kiss of a fasting person would break the fast. The Messenger (saw) said:

«أَرَأَيْتَ لَوْ تَمَضْمَضْتَ بِمَاءٍ وَأَنْتَ صَائِمٌ؟ فَقُلْتُ: لاَ بَأْسَ بِذَلِكَ، فَقَالَ رَسُولُ اللَّهِ ρ : فَفِيمَ؟»

"What if you rinse your mouth, does that break the fast? He replied 'No'" (Ahmad)

The Prophet (saw) showed Umar (ra) how to perform Qiyas by comparing the kiss of the fasting person to the rinsing of the mouth and showing that neither breaks the fast.[13]

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[12] Ghazali, Mustasfa, II, 64; Shawkani, Irshad, p. 212; Ibn Qayyim, I`lam, I, p. 200

[13] Ibn Hazm, Ihkam, VII, 100; Ibn Qayyim, I'lam, I, 200; Khallaf, `Ilm, p. 57.

The existence of an 'Illah constitutes the common matter upon which comparisons take place. The following Hadith is another illustration of the concept of 'Illah in Qiyas:

When the Messenger (saw) was asked about the trading of mature dates with dry dates, he asked:

«هَلْ يَنْقُصُ الرُّطَبُ إِذَا يَبِسَ؟ فَقَالُوا: نَعَمْ، فَقَالَ النَّبِيُّ ρ : فَلاَ إِذَنْ»

"Do the mature dates become lighter (in weight) if they dry up?" They said, "Yes." He said, **"Then, no."** (Daraqtuni)

Based upon the 'Illah, the Prophet (saw) demonstrated Qiyas by extending the rule of Riba to trading mature dates with dry dates.

Ibn Abbas narrated, "A woman said, 'O Messenger of Allah, my mother died owing a vow to fast; should I fast for her?' He (saw) said:

«إِنَّ أُمِّي مَاتَتْ، وَعَلَيْهَا صَوْمُ نَذْرٍ، أَفَأَصُومُ عَنْهَا؟ قَالَ: أَرَأَيْتِ لَوْ كَانَ عَلَى أُمِّكِ دَيْنٌ فَقَضَيْتِيهِ أَكَانَ يُؤَدِّي ذَلِكِ عَنْهَا؟ قَالَتْ: نَعَمْ، قَالَ: فَصُومِي عَنْ أُمِّكِ»

"What if your mother owed a debt and you paid it back for her, would that settle it?' She said, 'Yes.' He replied, **'Then, fast for your mother."**' (Muslim)

Also, 'Abdullah ibn Zubair (ra) narrated:

«جَاءَ رَجُلٌ مِنْ خَثْعَمٍ إِلَى رَسُولِ اللَّهِ ρ فَقَالَ: إِنَّ أَبِي أَدْرَكَهُ الإِسْلاَمُ، وَهُوَ شَيْخٌ كَبِيرٌ لاَ يَسْتَطِيعُ رُكُوبَ الرَّحْلِ، وَالْحَجُّ مَكْتُوبٌ عَلَيْهِ، أَفَأَحُجُّ عَنْهُ؟ قَالَ: أَنْتَ أَكْبَرُ وَلَدِهِ؟ قَالَ: نَعَمْ، قَالَ: أَرَأَيْتَ لَوْ كَانَ عَلَى أَبِيكَ دَيْنٌ فَقَضَيْتَهُ عَنْهُ أَكَانَ ذَلِكَ يُجْزِئُ عَنْهُ؟ قَالَ: نَعَمْ. قَالَ: فَاحْجُجْ عَنْهُ»

"A man from Khath'an (a tribe) came to the Messenger of Allah (saw) and said, 'My father embraced Islam at an old age, and he cannot ride the camel and at the same time he is obligated to perform Hajj. Should I perform Hajj for him?' The Prophet (saw) said, **'Are you the eldest son?'** He said, 'Yes.' The Messenger (saw) replied, **'What if your father owed a debt and you paid it back, would that settle it?'** He said, 'Yes.' The Prophet (saw) said, **'Then perform Hajj for him.'"** (Ahmad)

In both Ahadith, the Messenger instructed the Muslims how to draw the analogy between the debt of Allah in fasting and Hajj and the debt to a human being. Both of them share the same 'Illah, which is the existence of a debt that must be paid. As the definition of Qiyas is derived from the Ahadith of the Prophet (saw), the definition is considered a Hukm Shari'. The rule that is extracted through Qiyas is a Hukm Shari' that must be followed as any other Hukm Shari' extracted from other legislative sources. The definitions and general rules which are extracted from the evidences are themselves considered Ahkam Shar'iah.

Qiyas is established upon an 'Illah, which is the common motive between any two issues. If an 'Illah exists, then Qiyas can be performed otherwise Qiyas is not possible. According to the strongest opinion the 'Illah must be stated or derived from a Shari' text. If this is the case, this Qiyas would be Shari' because the 'Illah has been stated by a Shari' text. According to this view if this 'Illah has not been stated or derived from a Shari' text, then the Qiyas cannot be considered valid from a Shari' perspective nor can it be considered as a valid daleel.

It is documented that the Sahabah used Qiyas in many instances. When Abu Bakr (ra) gave inheritance to the maternal grandmother and not the paternal one, some of the Ansar told him:

(لقد ورَّثت امرأة من ميت لو كانت هي الميتة لم يرثها, وتركتَ امرأة لو كانت هي الميتة ورث جميع ما تركت)

"You have given inheritance to a woman (the maternal grandmother) from a dead person (the grandson) who, if she were the dead person, he would not inherit from her. On the other hand, you left out a woman (the paternal grandmother) who, if she died, this person will inherit from her. So give them the one-sixth of the inheritance."

When Abu Bakr heard this Qiyas, he changed his rule and established the new rule. In another example, Umar (ra) doubted applying the death penalty for the group that kills a person. Ali (ra) told him:

(يا أمير المؤمنين، أرأيت لو أن نفراً اشتركوا في سرقة، أكنت تقطعهم؟ قال: نعم. قال: فكذلك)

"O Ameer al Mu'mineen. If a group stole, would you cut their hands?" Umar said, "Yes," and Ali replied, "This is the same." Thus, Ali made Qiyas for the death penalty of a group based upon the penalty of theft for a group.

The evidence for Qiyas is the Shari'ah texts which contain 'Illah. The presence of an 'Illah entails that we follow the rationale of the text (ma'qool an-nass) of the Kitaab and Sunnah. Since the rationale is not from the mind but the text itself. If the rationale of the text extends to a new matter then we are obliged to extend it, otherwise we would not have followed the text.

6.3 The Process of Qiyas

Something is defined as a source in Usul when it serves as a source for new Ahkam (rules). Qiyas is a source because we can extract new Ahkam from it. By extending the original rule to new realities via a shared 'Illah, leads to new Ahkam for new realities and hence Qiyas is a source. This is one of the ways we can appreciate the capacity of Islam to apply to all times and places as Ahkam can be deduced for new realities and problems.

Qiyas is always built on the following four pillars:

i. Asl (old matter)
ii. Fari' (new matter)
iii. Hukm (rule)
iv. 'Illah (effective reason)

For example Allah (swt) said:

وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ

"And make ready against them all you can of power including horses to threaten the enemy of Allah." (TMQ Al-Anfal: 60)

The Hukm given in the verse is that preparation is an obligation. The old matter is horses. The 'Illah is to terrify the enemy of Allah. As for the new matter, it is anything that will realise the 'Illah of the preparation, which is to terrify the enemy. So these days it would be obligatory to have tanks, fighter planes, and aircraft carries since they terrify the enemy. Not only that, the 'Illah obliges the Islamic State prepare in the following areas:

a) The arms development and war industry must be the strongest of its age if it is to fulfill the 'Illah of terrifying the enemy.

b) The state cannot depend on others for its sources of power and hence it has to strive to develop its own weapons and armaments.

c) It should have new sophisticated weapons which will strike fear in the hearts of the enemy.

There are specific guidelines and requirements for Qiyas explained in the books of Usul al-Fiqh. One such guideline is that there should be no existing ruling from the Qur'an, Sunnah and Ijma' as-Sahabah for the new case.

Example:

Does a woman have to remove the nail polish before performing Wudhu? Some people claim she does not have to remove the nail polish in order to do Wudhu, and they justify it by doing Qiyas on the performance of Masah (wiping over the socks).

Qiyas cannot be performed in this situation because the Ayah regarding Wudhu explicitly orders to wash all parts of the hands, and polish prevents water from reaching the nails. In the case of Masah (wiping over the socks) the text is not presented with an 'Illah (legal reason) and cannot be extended to other things. Thus, Qiyas can be practiced in this issue.

Some of the other requirements for Qiyas are that the original ruling has to be from Qur'an, Sunnah and Ijma' as-Sahabah, not from another Qiyas. In addition, the texts of the Qur'an, Sunnah and Ijma' as-Sahabah must contain the justification for the ruling. We cannot use our 'Aql (intellect) to come up with the cause ('Illah).

6.4 The Arguments of those who reject Qiyas

The arguments against Qiyas have been articulated mainly by the Zahiri (literalist) school, and some amongst the Mu'tazilah, including, Ibrahim al-Nazzam. Also in principle, the Shi'a Imamiyyah do not recognise the validity of Qiyas, as they maintain that Qiyas is pure conjecture which must be avoided. In addition, the Quran, the Sunnah and the rulings of the Imams, according to the Shi'i Ulema, provide sufficient guidance for conduct, and any reference to Qiyas is unnecessary and unwarranted.[14]

This is definitely the view of the Akhbari branch of the Twelve Shi'a, whose refutation of Qiyas closely resembles that of the Zahiris. But the Usuli branch of the Shi'a validate action upon certain varieties of Qiyas, namely Qiyas whose 'Illah is explicitly

[14] Mutahhari, Jurisprudence, p. 21

stated in the text (Qiyas mansus al-``Illah), analogy of the superior (Qiyas al-awla) and obvious analogy (Qiyas jali). These varieties of Qiyas, in their view, are not mere speculations; they either fall within the meaning of the text or else constitute a strong probability (Al-zann al-qawi) which may be adopted as a guide for conduct. But they validate this through recourse to Ijtihad and 'Aql rather than Qiyas per se.[15]

However, those who rejected Qiyas like the Zahiris did not actually reject the principle of Qiyas because they accepted it when it came from the mantuq (uttered meaning). Being Zahiris i.e. literalists they did not take the 'Illal (reasons) that were derived from the mafhum (implied meaning) for this would be following speculation and not certainty. And as for the 'Illah taken from the Mantuq they did not call this Qiyas because they considered it as simply following the literal (Zaahir) meaning of the text whilst Qiyas for them was a term used to mean a speculative (Dhanni) process in legislation which they found unacceptable. That is why they rejected the term Qiyas and some of its forms though in reality they accepted it in principle.

Ibn Hazm one of the most outspoken against Qiyas from the Zahiri scholars said: "That God has assigned certain causes to some of His laws, but we say this only when there is a Nass (text) to confirm it." He then goes on to quote a Hadith of the Prophet to the effect that, "The greatest wrongdoer in Islam is one who asks about something, which is not forbidden, and it is then forbidden because of his questioning".[16]

Ibn Hazm continues: "We firmly deny that all the Ahkam of Shari'ah can be explained and rationalised in terms of causes. Almighty God enacts a law as He wills. The question of 'how and why' does not and must not be applied to His will. Hence it is improper for anyone to enquire, in the absence of a clear text, into

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[15] Asghari, Qiyas, pp.119,139

[16] Sahih Muslim, I, 423, Hadith no, 1599

the causes of divine laws. Anyone who poses questions and searches for the causes of God's injunctions 'defies Almighty God and commits a transgression".[17]

The supporters of analogy, according to Ibn Hazm, proceed on the assumption that the Shari'ah fails to provide a text for every matter, an assumption which is contrary to the Ayat of the Quran in his view. He quotes the following Ayat to this effect:

مَا فَرَّطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ

"We have neglected nothing in the Book" (TMQ Al-An'am: 38)

وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِكُلِّ شَيْءٍ

"We revealed the Book as an explanation for everything." (TMQ An-Nahl: 89)

الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتْمَمْتُ عَلَيْكُمْ

"This day, I perfected year religion for you, and completed My favour upon you." (TMQ Al-Maida: 4)

Since the Ahkam of the Lawgiver are all-inclusive and provide complete guidance for all events, our only duty is to discover and implement them. In his view to consider Qiyas as an additional proof would be tantamount to an acknowledgement that the Quran fails to provide complete guidance.[18]

Furthermore he argues that Qiyas derives its justification from an 'Illah which is common to both the original and the new case. The

[17] Ibn Hazm, Ihkam, VIII, 102
[18] Ibn Hazm, Ihkam, VIII, 18

'Illah is either indicated in the text, in which case the ruling is derived from the text itself and Qiyas is redundant; or alternatively, where the 'Illah is not so indicated, there is no way of knowing it for certain. Qiyas therefore rests on conjecture, which must not be allowed to form the basis of a legal ruling. This according to Ibn Hazm, has been mentioned in the Qur'anic Ayah:

وَإِنَّ الظَّنَّ لَا يُغْنِي مِنَ الْحَقِّ شَيْئًا

"Conjecture avails nothing against the truth" (TMQ An-Najm: 28)

Identifying the 'Illah in Qiyas is an exercise in speculation, whereas the Quran enjoins us to:

وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ

"Pursue not that of which you have no knowledge." (TMQ 17:36)

Lastly, Ibn Hazm holds that Qiyas is forbidden in the Quran.[19] Thus the verse:

يَا أَيُّهَا الَّذِينَ آَمَنُوا لَا تُقَدِّمُوا بَيْنَ يَدَيِ اللَّهِ وَرَسُولِهِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ

"O you believers! Do not press forward before God and His Messenger, and fear God." (TMQ Hujarat: 1)

According to his interpretation this means that the believers must avoid legislating on matters on which the Lawgiver has chosen to remain silent upon. The same point is conveyed in the Hadith where the Prophet (saw) ordered the believers as follows:

[19] Ibn Hazm, Ihkam, VIII, 9

« دعوني ما تركتكم إنما هلك من كان قبلكم بسؤالهم واختلافهم على أنبيائهم فإذا نهيتكم عن شئ فاجتنبوه وإذا أمرتكم بأمر فأتوا منه ما استطعتم »

"Ask me not about matters which I have not raised, nations before you were faced with destruction because of excessive questioning and disputation with their Prophets. When I command you to do something, do it to the extent that you can, and avoid what I have forbidden."[20]

Thus in regard to matters on which the Shari'ah texts are silent, according to the Zahiri's it is incorrect for a Muslim to take the initiative in issuing a Hukm, for he is ordered not to do so. Qiyas therefore violates the express terms of the Quran and the Sunnah in their view.

Their arguments are flawed for the following reasons:

a) The Ayat that mention that the Deen is complete and that the Quran has an explanation of everything mean that the Islamic sources i.e. the Quran and the Sunnah have the capacity to deal with all issues. The majority of Ulema argue that either rules have come directly within these texts or through indications upon which Qiyas or Ijtihad is necessary. Making Ijtihad or Qiyas does not invalidate the meaning of these Ayat in fact they are the revealed method in order to extract the rulings from the Quran and Sunnah.

b) With reference to some of the Ayat that the opponents of Qiyas have quoted, especially on the use of speculative evidence in law, the Ayat in question forbid speculation (Zann) in matters of belief (Aqeeda) only. As for the practical rules of Fiqh, most of them are from texts which are speculative in meaning (Dhanni dalalah). This does not necessarily mean that action upon them must be suspended, the conclusion of which would mean that there would be no difference of opinion allowed at all in Fiqh, which would be

[20] Ibn Hazm, Ihkam, VIII, 15

contrary to established evidences permitting difference of opinion in certain areas.

c) The Ayat from the Quran that contain 'Illah, the aforementioned evidences from the Sunnah and 'Ijma of the Sahabah have established Qiyas as a source of Shari'ah.

6.5 'Illah from the Text or the Mind?

Although some scholars like those from the Hanafi school accept rationale 'Illah's, the strongest position is that the 'Illah must be from the text. This is because the mind is not capable to determining the reasons for the rules unless they have been revealed by Allah (swt). The 'Illah is the daleel which allowed the extension of the rule to a new matter. For this rule to be a Hukm Shar'i i.e. a valid ruling of the Shar'iah, it must be taken from the speech (Khitaab) of the Legislator since the definition of Hukm Shar'i is the speech of the Legislator relating to man's actions. Any rule which is not from the speech of the legislator is rejected because it is not revelation (Wahiy) and we are ordered only to follow the Wahiy in our actions. To extend the rule without a textual 'Illah would be like extending the prohibition of alcohol to vinegar just because vinegar originates from alcohol. Alcohol is one reality and vinegar is another. One cannot arbitrarily extend the Hukm without the text allowing such an extension. If the text allows it through an 'Illah, then this is a valid Hukm Shar'i, if not then it is a rational judgment which has no value in the Shar'iah.

This is notwithstanding the fact that man is unable to give judgment on that which he cannot sense. If the Creator did not provide us the reason ('Illah) for the legislation of the rule then how can man judge it. Thus, not only is the rational 'Illah rejected from the viewpoint of Hukm shar'i but it is practically impossible for man to give such a judgment in the first place.

Furthermore, the fact that the mind cannot make analogy without a Shar'i 'Illah is aptly demonstrated by the reality of the Shari'ah rules

themselves. For example, we find similar realities are given different Ahkam while different realities are given the same Hukm. The mind can normally make analogy between similar things but the text contradicts this principle: So in the absence of water, of all things dust are sufficient to make Wudhu even though they are two different things. According to the Shari'ah rules if a baby girl urinates on clothes then the clothes must be washed but if a baby boy does the same then it is sufficient just to sprinkle some water on it. Thus, similarity does not mean the same Hukm just as dissimilarity does not mean a different Hukm. So how can the mind make analogy for the sake of new Ahkam when even the existing Ahkam cannot be rationalised without a Shar'i 'Illah?

6.6 The areas of Ahkam Shari'ah which do not contain 'Illah

According to the strongest view no 'Illah exists in the Asl (origin) of the rules relating to food, clothing, morals and ritual worships ('Ibadat), this is due to two reasons:

a) By a scrutiny of the texts we found that they do not contain 'Illah.

b) These rules are not related to achieving results in this life.

The divine rules related to 'Ibadat (worships), Mat'umaat (foodstuffs), Malboosaat (clothing) or Akhlaq (morals) cannot be reasoned by 'Illah. The primary motive for these actions is worship and hence there are no tangible results that we seek since the results are in the Hereafter. They should be taken as they came in the text and should not be based upon an 'Illah. Thus, prayer, fasting, pilgrimage, Zakah, the method of praying (Salah), the number of its rak'at, the rites of pilgrimage (hajj) and the minimum amount of property liable to payment of Zakah (Nisab of Zakah), and the like should be taken, accepted and submitted to as they came in the text ('Tawkifiyyah) and no 'Illah is sought for them. The same applies to the prohibition of eating the meat of a dead animal, pork and the like. Seeking 'Illah for these rules is wrong and dangerous, because

if an 'Illah was sought the result would be that if the 'Illah of the rule ceased to exist then the rule would no longer exist. This is because the 'Illah is connected to the rule in existence and absence.

As an example, if we assumed cleanliness was the 'Illah for the Wudhu (ablution), and physical exercise as the 'Illah for prayer, and good digestion as the 'Illah for fasting etc., then in these situations whenever the 'Illah doesn't exist, the rule would not exist either, this would lead us to abandoning these shari'ah rules. Another example would be if someone raised a clean pig which they had fed with good food and kept in a hygienic manner, would we then be permitted to eat it? Of course that would not make it permissible.

Therefore seeking an 'Illah is dangerous for the rule and its performance. Thus, it is obligatory to take rules of 'Ibadat as they are, without seeking an 'Illah for them.

Contrary to a common misconception the prohibition of alcohol contains no 'Illah. There is no 'Illah contained in the verses prohibiting it, furthermore the Messenger (saw) said:

« حرمت الخمر لعينها »
"Wine (khamr) was forbidden for itself."

However in the Furu' (branches) of worship 'Illah's may exist because certain tangible results are sought. For example, Jihad is from the rules of worship ('Ibadat) but its performance entails certain tangible results and hence there is a propensity for 'Illah's to exist. So preparation for Jihad is a tangible result which is sought and it does contain an 'Illah which is to terrify the enemy.

The morals (Akhlaq) are values for which rules have been established to illustrate the virtues and noble deeds and their opposite. They also result from 'Ibadat, as well as being observed in Mu'amalat. This is because Islam aims in its legislation to take man on the road towards perfection, so as to reach the highest

achievable level. Therefore man has to work towards acquiring the supreme qualities and to maintain them. The good moral is a value which is intended to be achieved because it is one which Shar'a has stated, and its value is targeted when performing these virtues and acquiring them. Morals are a part of the Islamic Shari'ah, and a part of the commands and prohibitions of Allah, which must be achieved by every Muslim so that his performance of Islam becomes complete, and his undertaking of the commands and prohibitions of Allah is perfected.

A Muslim neither acquires moral attributes for their sake, nor for their benefit. Rather he acquires them only because Allah commanded him with them and for no other reason. So, a Muslim is not characterised with truthfulness for the sake of truthfulness itself, nor for the benefit it has, rather because Shar'a ordered of it.

A Muslim should not acquire morals for the sake of morals. An action which man performs might be by itself, bad, but he thought it good, so he performed it. The attribute, which he was characterised with, might be by itself bad, but he considers it a good attribute so he acquired it and thus errors would arise because man performed morals for their own sake. For example, someone may seek to be truthful for the sake of it, therefore when he is captured by the enemy he is truthful to them and gives them all the information regarding the position of the Muslim troops and their strategy even though the Prophet (saw) said:

« الْحَرْبَ خَدْعَةٌ »

"War is deceit"

And Islam prohibits giving information to the enemy that would lead to harming the Muslims.

Unless Islam defines the good attributes and the bad attributes and unless the Muslim performs them according to this definition, then his acquiring of these attributes would not be in compliance with the Ahkam Shari'ah. Therefore, the Muslim should not be

characterised with truthfulness for the sake of truthfulness, nor should he be characterised with compassion for the sake of compassion, nor should he be characterised with all the morals for their own sake. Rather he should be characterised with them as commands from Allah, because the fundamental fact is that these morals are based on the Islamic 'Aqeedah. Observing this issue would guarantee the possession of the morals in individuals, thus purifying the soul of any impurity and distancing it from any corrupting factors. Therefore, the best way to protect morals is to confine them to what is stated in the text (Qur'an and Sunnah).

As for not acquiring morals for the sake of benefit, this is because benefit is not intended of the moral and should not be aimed at, lest it corrupts it and makes it revolve around the benefit. Hence, morals are attributes which man must be characterised with, freely and willingly, by the incentive of Taqwa (the fear of Allah). A Muslim does not abide by morals simply because they benefit or harm him in life, but he does so in response to the commands and prohibitions of Allah. This is the understanding, which makes characterisation with good morals constant and does not revolve around benefit. Such morals built on the exchange of benefit would make the individual a hypocrite, revealing certain behaviour while concealing his true nature. For example, may only be nice to another person because he wants him to buy something from him, but if there is someone who he cannot obtain material benefit from then he would not be nice to him.

Therefore, morals are not reasoned, and 'Illah should never be invented for them. They must be accepted as they came in Shar'a, irrespective of any 'Illah. It is erroneous and dangerous to seek 'Illah for morals, so as not to abandon the characterisation with morals when their 'Illah has ceased.

6.7 Types of Ahkam Shariah where an 'Illah can be found

As for the Mu'amalaat and 'Uqubat it is possible that the texts regarding them may contain 'Illah's because they generally entail

tangible results. For example, Allah ordered the Messenger (saw) to distribute the spoils of war amongst the orphans and the poor. This is a tangible result sought by the Hukm which is open to having an 'Illah. Even though the Hukm is fulfilled for Allah's sake the result is still tangible which means that there may be a reason why the poor should receive the booty. The reason here of course is stated in the text:

كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ

"So that the booty does not become a commodity only between the rich among you." (TMQ Al-Hashr: 7)

Of course many other texts relating to these areas do not include an 'Illah at all such as:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

"Allah has permitted trade and has forbidden Riba (interest)." (Al-Baqara: 275)

The rules and evidences regarding the Muslim woman having to wear Khimar (headscarf) and Jilbab, the allowance for man to marry up to four wives at one time, the prohibition of women being rulers and many other rules have come without 'Illah, therefore these rules should not be reasoned at all and should be taken as they are.

There are four types of 'Illah:

- Explicit (Saraahatan)
- Implicit (Dalaalatan)
- Derived (Istinbaatan)
- Those derived through analogy (Qiyasan).

Saraahatan refers to an explicit (Sareeh) indication of the text. What we mean by explicit indication is that the reasoning (Ta'leel) is in

the Mantuq (pronounced meaning) of the text as opposed to the Mafhum (inferred meaning) of the text. This we can see in the use of certain expressions and prepositions that denote reasoning. For example the expression 'Min ajl' in Arabic which means 'because of' or 'in order to', it is an explicit indication of causality and not something that is inferred or derived from the text.

For instance the Messenger (saw) said:

«إِنَّمَا جُعِلَ الاسْتِئْذَانُ مِنْ أَجْلِ الْبَصَرِ»

"Indeed, permission has been made obligatory because of (min ajl) sight."[21]

Here, the reasoning is explicitly pronounced in the text by saying 'because of'. Thus, the reason for legislating the rule of asking permission before one enters another persons house is because (Min ajl) one might see that which is not lawful to see, such as a non-mahram woman whose 'Awrah (parts which must be covered) are not completely covered because she is in her private space. The same goes for the following saying of Muhammad (saw):

« إِذَا كُنْتُمْ ثَلَاثَةً فَلَا يَتَنَاجَى رَجُلَانِ دُونَ الْآخَرِ حَتَّى تَخْتَلِطُوا بِالنَّاسِ أَجْلَ أَنْ يُحْزِنَهُ»

"If there are three of you, two should not whisper to each other in front of the third because (Min ajl) that will upset him."[22]

So the reason ('Illah) for not whispering between two people while a third is present is because that might cause the third to become upset.

An implicit (Dalaalatan) 'Illah is when the text mentions an attribute which rationally has a link to the Hukm it has mentioned.

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[21] Bukhari: 5772
[22] Ahmad: 1/375

This linkage is not uttered but understood from the text. For example, the Messenger (saw) said:

« فى الغنم السائمة زكاة »

"On the grazing sheep zakah is payable."

The attribute which brings the Hukm into existence is grazing. Naturally one might ask, what is it about grazing that obliges Zakah? If we think about the meaning of grazing we understand that it means to let the animals graze from the open pastures which are public property. Since this is taking from the public resources then one should pay it back by paying Zakat i.e. give back to the public. Hence the one who feeds his livestock in a pen, he has not used the public resources and therefore Zakah is not payable. This causality (Ta'leel) between the attribute and the Hukm is not explicitly stated and hence it is not from the category of sareeh. But since it is understood from the meaning of the word grazing and its linkage to the Hukm then we can say this is an 'Illah extracted form the indication of the text i.e. this 'Illah is notified (Tanbeeh) by the implied meaning (Mafhum) and not from the uttered expression (Mantuq).

Let us look at another example, the Prophet (saw) said:

«إِنَّهَا لَيْسَتْ بِنَجَسٍ، إِنَّهَا مِنَ الطَّوَّافِينَ عَلَيْكُمْ وَالطَّوَّافَاتِ»

"The saliva of the cat is not impure (najas) because it is constantly around you (i.e. domesticated)."[23]

Here the Hukm of impurity or purity of the cat's saliva is linked to whether it is domesticated or not. So if the cat is domesticated then the saliva is pure and if not the saliva is impure. Here the text did not say explicitly that the reason for cat's saliva being pure is because it is domesticated. Rather we understand this from the indication (dalaalah) of the word 'domesticated' and its linkage to

[23] Tirmidhi, Ahmad, Abu Dawud, Nasa'i, and Ibn Maja

the presence or absence of the Hukm i.e. when the cat is around the house it is not going to eat Najas (impurities) and hence its saliva is pure. However, if it is wild then it is likely to eat whatever it finds outside and so its saliva will not be pure. This 'Illah is not stated but understood or notified from the meaning of domestication and hence the 'Illah is extracted from the indication (Dalalaah) of the attribute. Thus, we call this 'Illah an implicit 'Illah. The derived (Istinbaatan) 'Illah is not taken from any explicit prepositions or particles and nor is it taken from the indication (Dalaalah) of the uttered expression. Rather it is inferred from the structure or a scrutiny of one or more texts.

An example of this is the 'Illah prohibiting the private ownership of public resources. This has been derived by looking at various Ahadith.

Ibn Abbas narrated that the Prophet (saw) said,

«الناس شركاء في ثلاث الماء والكلأ والنار»

"People are partners (associates) in three things: in water, pastures and fire" (Abu Dawud)

Anas narrated from Ibn Abbas adding:

«وثمنه حرام»

"and its price is haram (forbidden)."

It is narrated from Abu Hurairah (ra) that the Prophet (saw) said:

«ثلاث لا يمنعن: الماء والكلأ والنار»

"Three things are not prevented from (the people); the water, the pastures and the fire." (Ibn Majah)

This is an evidence that people are partners (associates) in water, pastures and fire, and that the individual is prohibited from

possessing them. But it is noticed that the Ahadith mentioned them as three, and they are Jamid (rigid) nouns, and there was no mentioning of 'Illah (reason) in them. The Ahadith did not include 'Illah (reason) and this could imply that these three things are the only ones which represent public property, with no consideration given to their depiction for the community's need for them.

However, if one scrutinised the issue he would find that the Prophet (saw) allowed the possession of water in At-Taif and Khaybar by individuals, and they actually possessed it for the purpose of irrigating their plants and farms. Had the sharing (association) of water been just because it is water and not because of the consideration of the community's need for it, then he would not have allowed individuals to possess it.

So from the saying of the Prophet (saw):

«الناس شركاء في ثلاث الماء والكلأ والنار»

"People are partners (associates) in three things: in water, pastures and fire" (Abu Dawud)

In addition to his permission of individuals to possess small quantities of water, it can be deduced that the 'Illah (reason) of association in the water, pastures and fire, is their being of the community utilities that are indispensable to the public.

Therefore, anything that qualifies as being of the community utilities is considered a public property, whether or not it is water, pasture or fire.

Hence the 'Illah here is a derived 'Illah because it is inferred through the scrutiny of texts and not through an explicit meaning or an implied meaning of expressions.

The fourth type of 'Illah is Qiyasan (extraction through analogy), this is when a new 'Illah is extracted from an existing implicit 'Illah

by way of analogy to the effective link that both share. To help us grasp this let us look at the following road safety instruction: 'Do not drive when tired'.

The effective link between tiredness and driving is that driving when tired may cause us to have an accident. Hence, the attribute of tiredness is obviously the 'Illah for the instruction not to drive. However, because there is an effective link between the original attribute and the hukm then it is possible to make analogy between the existing attribute and any new attribute which shares the same effective link. Hence driving when stressed is analogous to tiredness because it shares the same effective link which is that it may cause an accident and hence this would be an example of a new 'Illah extracted though Qiyas. So driving when stressed would also violate the instruction jut like tiredness.

Now let us apply the same principle to the following hadith:

« لا يَقْضِي الْقَاضِي بَيْنَ اثْنَيْنِ وَهُوَ غَضْبَانُ »

"The judge should not pass judgment in a state of anger"[24]

Here the implicit 'Illah for not passing judgment is anger because anger will effect the judgment. So the effective link between the attribute of anger and the rule is disruption to objective thinking. Due to the existence of an effective link we can make analogy between anger and other new attributes which share the same effective link and extract a new 'Illah though Qiyas. For example hunger is analogous to anger because it shares the same effective link, which is that it will effect objectivity. Hence hunger is a new 'Illah derived through analogy. The Sahabah extended the ruling of this Hadith to anything which resembles anger in its effect such as extreme hunger and depression.[25]

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[24] Abu Dawud, Sunan, III, 1018, Hadith no 3582, Musnad Ahmad Vol 41, p354, Hadith No 19495

[25] Sha`ban, Usul, p. 151

6.8 Customs and traditions cannot be an 'Illah

The valid 'Illah is the Shar'ai 'Illah that is mentioned in the text from Qur'an and Sunnah, for only these two are the Shar'ai texts. Therefore, the 'Illah upon which the reasoned Hukm Shar'ai is built is a Shar'ai 'Illah and not a rational 'Illah. In other words, 'Illah must be mentioned in the text either explicitly or implicitly or by deduction or through Qiyas. This 'Illah is connected with the reasoned Hukm in presence and absence. Thus the rules revolve with their 'Illal. So we find a thing is prohibited in a situation due to the existence of a Shar'ai 'Illah, and if this 'Illah disappears that very thing becomes permissible. So the Hukm Shar'ai revolves with the 'Illah in existence and in absence, thus when it exists the Hukm exists, and if the 'Illah does not exist the rule doesn't exist either.

However, the absence of the rule due to the absence of the 'Illah does not at all mean that the Hukm Shar'ia has changed, rather the Hukm Shar'ai of the question remains as it is, without change. It is only the rule no longer applied due to the absence of the 'Illah, and will be applied once the 'Illah returned.

The relationship of the rule with the 'Illah in existence and in absence does not mean that the rules change due to the change of the time and place. Thus claiming that bringing about the benefit and preventing corruption is the 'Illah of the Hukm Shar'ai, which changes as the time and place change, so the Hukm Shar'ai changes accordingly is false. This is because bringing about benefit and preventing harm are not at all the 'Illah of the Akham, since no text came to denote that bringing about benefit and preventing corruption are 'Illah for all the Akham, nor to denote that they are a 'Illah for a specific rule. Thus, it cannot be taken as a Shar'ai 'Illah.

Moreover, the Shar'ai 'Illah is that which is taken from a Shar'ai text and therefore should be restricted to it and its meaning. The Shar'ai text has neither indicated that bringing about a benefit nor warding off corruption as being the 'Illah. That which is brought in

the text is not indicated by the time or the place nor indicated by the action itself. It is rather indicated by the text in manifesting the 'Illah of the rule. This text never changes, so no consideration is given to the time and place in this context, nor is there a value to bringing about benefit and preventing corruption. Accordingly, Ahkam Shara'iah do not change with the change of time and place, they remain as such regardless of the change of times and places.
As for the change of traditions and customs of people, this does not have an effect in changing the rule, for the tradition is not an 'Illah of the Hukm Shar'ai nor a source for it. The traditions may agree or disagree with the Shar'a; If they disagree with the Shar'a then the Shar'a has come to abrogate and change them, since the function of the Shar'a is to change the corrupted traditions and customs, because they are the factors that cause corruption of the society. Therefore, they are not taken as a source for the Hukm Shar'ai nor an 'Illah for it. However, if the traditions were in agreement with Shar'a, then the rule is proved by its Shar'ai evidence and by its Shar'ai 'Illah and not by these traditions, even if these traditions do not contradict the Shar'a. Therefore, the customs cannot rule over the Shar'a, rather the Shar'a rules over the traditions and customs. Accordingly, the Ahkam Shar'iah have their own evidence which is the text and they have Shar'ai 'Illah and the traditions and customs are not a part of that at all.

6.9 Difference between Manaat al-Hukm (reality of the rule) and 'Illah

It would be wrong to say that the Manaat ul-Hukm is the reason behind the Hukm (I'llatul Hukm). This cannot be said because the subject (Manaat) of the verdict is different from the reason ('Illah) of the verdict. In fact there is a big difference between the subject and the reason. The 'Illah is what induces the verdict to be initiated, i.e. it is the thing that indicates the intention of the Legislator behind the verdict. This, without any doubt, requires a Shari'ah evidence to indicate it clearly so that it is understood that it is the intention of the Legislator for initiating the verdict.

As for the subject of the verdict, this is the subject upon which the verdict applies or to which the verdict is related. In other words, it is the issue which the verdict conforms and not its evidence nor its reason ('Illah). It therefore, follows that the Manaat (reality) is the thing which the verdict is attached to, i.e. the verdict is brought to deal with it, or solve it. It is incorrect to say that the verdict is brought because of it, so as to say that it is the 'Illah behind the verdict. The Manaat of the verdict is the non-textual aspect of the Shari'ah verdict. To comprehend it would be other than to comprehend the 'Illah. As comprehending the 'Illah would be to understand the text or texts which had come to justify the 'Illah.

For example, alcohol is Haram, the divine law is the prohibition of alcohol. The investigation that a certain drink is alcohol or not, so as to judge it as Haram or not is an investigation of the Manaat. It is necessary to study whether the drink is alcohol or not in order to state that it is Haram. This investigation of the reality of alcohol is a verification of the Manaat. Another example is the divine law that the Mutlaq (absolute, unrestricted) water is the one which is allowed for Wudhu. So the investigation as to whether the water is unrestricted or restricted in order to judge upon it as allowed for Wudhu, is a verification of the Manaat. Therefore, it is necessary to study the water to determine if it is free or restricted. This study of the reality of the water is simply the verification of the Manaat and nothing to do with the 'Illah of the Hukm. Similarly, a person who made Hadath (discharged something from back or front) has to make Wudhu for the prayer, therefore the verification that the person is Mohdath (impure) or not Mohdath is a verification of the Manaat.

The famous Maliki scholar Imam al-Shatibi (d. 780 A.H.) said in the book Al-Muwafaqat: "These subjects and the like which we necessitated to define the Manaat must take the evidence about it according to the reality of every incident." And he further states: "Ijtihad could be connected with the verification of the Manaat, and thus it does not require the knowledge of the aims of the lawgiver (Allah), nor does it require the knowledge of the Arabic

language, because the aim of this Ijtihad is knowing the subject as it is. So it requires the knowledge of what this subject can't be recognised without."

The investigation of the 'Illah is related to the understanding of the text from the Ayat or Ahadith and therefore it is the work of a qualified Mujtahid. Whereas the verification of the Manaat such as the verification of whether a liquid is alcohol is the investigation of the reality of a thing that is the subject of the Shari'ah. Accordingly, it is not a condition that the one who verifies the Manaat be a Mujtahid or a Muslim, but it is enough that he or she to be knowledgeable of the matter.

Sources of Hukm Shar'i not agreed upon by all the Ulema

7.1 Ijma' al Ummah

In the past and present, some Ulema have taken Ijma' al Ummah as a legislative source and it has been defined as the agreement of the Ummah of Muhammad (saw) on a matter at anytime, past, present, or future. The one Ayah, which is most frequently quoted in support of Ijma' al Ummah, is in Surah al-Nisa: 115.

وَمَنْ يُشَاقِقِ الرَّسُولَ مِنْ بَعْدِ مَا تَبَيَّنَ لَهُ الْهُدَى وَيَتَّبِعْ غَيْرَ سَبِيلِ
الْمُؤْمِنِينَ نُوَلِّهِ مَا تَوَلَّى وَنُصْلِهِ جَهَنَّمَ وَسَاءَتْ مَصِيرًا

"And anyone who splits off from the Messenger after the guidance has become clear to him and follows a way other than the believers, we shall leave him in the path he has chosen and land him in hell - what an evil refuge." (TMQ An-Nisa: 115)

Some of the Ulema observe that "the way of the believers" in this Ayah refers to their agreement and the way that they have chosen, in other words, their Ijma'. Adherence to the way of the community is thus binding and departure from it is forbidden. Others have stated that even if the Ayah constitutes an irrefutable proof, it does not have a Qata'i (conclusive) meaning.

Secondly, this Ayah refers to the Oneness of Allah and the Prophethood of Muhammad (saw). And "Following a path other than that of the believers," means abandoning Islam. The Ayah was revealed on the occasion of a Muslim who turned away from Islam. Thus, the Ayah is not general. Due to these points, utilising this Ayah as a Daleel for Ijma' al Ummah is invalid.

The Ahadith which are most frequently quoted in support of Ijma' al Ummah are:

«أُمَّتِي لاَ تَجْتَمِعُ عَلَى ضَلاَلَةٍ»

"My Ummah shall never agree on a Dhalalah (misguidance)." (Ibn Majah)

«لَمْ يَكُنِ اللَّهُ لِيَجْمَعَ أُمَّتِي عَلَى الْخَطَإِ»

"Verily Allah will not make my Ummah agree upon al Khata (mistake)." (Tirmidhi)

«وَإِنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يَكُنْ لِيَجْمَعَ أُمَّةَ مُحَمَّدٍ ρ عَلَى ضَلاَلَةٍ»

"Allah will not let the Ummah of Muhammad (saw) agree upon Dhalalah (misguidance)" (Ibn Majah)

«سَأَلْتُ اللَّهَ عَزَّ وَجَلَّ أَنْ لاَ يَجْمَعَ أُمَّتِي عَلَى ضَلاَلَةٍ فَأَعْطَانِيهَا»

"I beseeched Allah Almighty not to bring my Ummah to the point of agreeing on Dhalalah (misguidance) and He granted me this." (Ibn Majah)

«لاَ تَزَالُ طَائِفَةٌ مِنْ أُمَّتِي قَوَّامَةً عَلَى أَمْرِ اللَّهِ، لاَ يَضُرُّهَا مَنْ خَالَفَهَا»

"A group of my Ummah shall continue to remain on the right path. They will be the dominant force and will not be harmed by the opposition of dissenters." (Ibn Majah)

A source for legislative rulings has to be based on a Qata'i Daleel. These Ahadith are Adilla Dhanniya (conjectural evidences). Secondly, these Ahadith cover different topics, first of which is that the Ummah does not agree upon Dhalalah (ضلالــة), which means returning back from Islam.

In fact, these Ahadith justify that the Muslim Ummah, as a whole, will not revert to Kufr. Furthermore, the Ahadith that mention "Khata" (mistake) are weak Ahadith.

Also, if the above-mentioned Ahadith are taken as a source to justify the honesty of the Ummah as a whole, these Hadith contradict other Hadith in which the Prophet (saw) criticised future generations. As an example, Imran ibnu Haydh reported the Prophet (saw) as saying:

«خَيْرُ أُمَّتِي قَرْنِي، ثُمَّ الَّذِينَ يَلُونَهُمْ، ثُمَّ الَّذِينَ يَلُونَهُمْ، قَالَ عِمْرَانُ: فَلاَ أَدْرِي أَذَكَرَ بَعْدَ قَرْنِهِ قَرْنَيْنِ أَوْ ثَلاَثًا. ثُمَّ إِنَّ بَعْدَكُمْ قَوْمًا يَشْهَدُونَ وَلاَ يُسْتَشْهَدُونَ، وَيَخُونُونَ وَلاَ يُؤْتَمَنُونَ، وَيَنْذُرُونَ وَلاَ يَفُونَ، وَيَظْهَرُ فِيهِمُ السِّمَنُ»

"The best of my Ummah are those who lived in my lifetime then those who lived after them and those who lived after them. (Imran said: I don't remember whether it was two generations after his or three). Then will come a time when people will fabricate stories or tale without evidence and will cheat and not be trustworthy nor be faithful and they will appear obese." (Bukhari)

Many scholars such as Bukhari and Ahmad bin Hanbal report this in many forms. In another saying, the Prophet (saw) said:

«ثم يفشو الكذب و ان الرجل يصبح مؤمنا و يمسى كافرا وان الواحد منهم يحلف على مالا يعلم ويشهد قبل أن يستشهد وان الناس يكونون كالذئاب»

"Lying will become a common practice, the believer will be called unbeliever and some people will give false testimonies and will testify before being asked and some people will become like wolves." (Tirmizi, Ibn Majah & Ahmad)

All these sayings contradict the previous sayings if they are taken to prove Ijma' al Ummah, because Ijma' al Ummah assumes that the Ummah will always agree on good, whereas, these Ahadith indicate that some parts of the Ummah will go astray. There cannot be contradiction in the revelation. Thus, Ijma' al Ummah can have no value as a source for Hukm Shar'i.

7.2 Ijma' al Mujtahideen

Ijma' al Mujtahideen is defined as a unanimous agreement of the Mujtahideen (those who exert their efforts to extract the Ahkaam) of the Muslim community of any period following the death of the Prophet (saw). The proponents of Ijma' al Mujtahideen have used the same Daleel, which is used for Ijma' al Ummah. Thus the same arguments would apply to Ijma al Mujtahideen.

7.3 Ijma' Ahlel Bayt

Some Ulema have confined Ijma' to the household of Prophet Muhammad (saw). In support of their argument, they refer to the following evidence:

يَا نِسَاءَ النَّبِيِّ

إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا

"O Wives of the Prophet (saw)... Allah wishes to cleanse the people of the House (of Prophet (saw) of impurities (al-Rijis)" (TMQ Al-Ahzab: 32-33)

The proponents of this type of Ijma' have said that when this Ayah was revealed the Messenger (saw) took his cloak and covered Imam Ali (ra), Hussein, Hasan and Fatimah umm Hasan (ra) and said:

«اللَّهُمَّ هَؤُلاَءِ أَهْلُ بَيْتِي»

"O Allah these are members of my household." (Tirmidhi)

Also, the Ulema have backed their argument from the Sunnah with this saying of the Prophet (saw):

«إِنِّي تَارِكٌ فِيكُمُ الثَّقَلَيْنِ كِتَابَ اللَّهِ وَعِتْرَتِي»

"I am leaving amongst you two valuable things (al-thaqalayn), the book of Allah and my (Usra) family."

Thus, the claim is made that Allah (swt) has lifted ar-Rijis from the family of the Prophet (saw) and that ar-Rijis means mistake. According to their argument, Ahlel Bayt are infallible, and thus, their Ijma' is a legitimate source of Shari'ah.

In response to the Ayah in Surah al-Ahzab, the meaning is not Qata'i (decisive). Also, this Ayah was revealed in regards to the wives of the Prophet (saw) as well. It is not exclusive to Fatimah umm Hasan (ra), Ali (ra) and their sons (ra). Does this mean that all his (saw) wives were infallible?

Based on this argument, they should be? Also, the word "ar-Rijis" mentioned in the Ayah means the lifting of suspicion or dishonesty and not mistake. The word Rijis has been mentioned in many Ayahs under the meaning of moral impurities such as:

كَذَلِكَ يَجْعَلُ اللَّهُ الرِّجْسَ عَلَى الَّذِينَ لَا يُؤْمِنُونَ

"Thus Allah lays rijis (shame) upon those who believe not." (TMQ Al-An'am: 125)

وَمَا كَانَ لِنَفْسٍ أَنْ تُؤْمِنَ إِلَّا بِإِذْنِ اللَّهِ وَيَجْعَلُ الرِّجْسَ عَلَى الَّذِينَ لَا يَعْقِلُونَ

"It is not for any soul to believe except by the permission of Allah. He has set Rijis (uncleanness) upon those who have no sense." (TMQ Yunus: 100)

Rijis, in these and many other places in the Qur'anic text, denotes moral impurities. Removing the Rijis does not in any way mean that they are infallible.

As for the Hadith, which narrated that the Prophet (saw) covered, with his (saw) cloak, Imam Ali, Fatimah Umm Hasan (ra), Hussain and Hasan (ra), and then said, these are my family, it is by no means an indication that Ahlel Bayt is solely limited to them. The word family in the Ayah in Surah Ahzab means the wives of the Prophet (saw) as well.

A Hadith of Al-Thaqalayn narrated by Zayd Bin Arqam (ra) has backed this. For clarification of this Hadith, Hussein (ra) said to Zayd (ra) "O Zayd who are his (saw) family? Are they not his (saw) wives?"

He said, "Yes his (saw) wives are his (saw) family, but his (saw) family are those who have been excluded from accepting Sadaqah (charity)"

So he inquired, "Who are they?" - Zayd said, "they are the family of Ali, the family of Aqil, the family of Ja'fer". Hussain then asked, "Have all these people been excluded from accepting Sadaqah?" And he replied, "Yes".

All of this confirms that the mentioned Ayah cannot be taken as evidence that the consensus of ahlel bayt and their infallibility is justified. This means that Ahlel Bayt is not restricted to Fatimah umm Hasan, Ali (ra) and their sons (ra) only.

7.4 Ijma' Ahlel Medinah

The Ulema who subscribe to this type of Ijma' have restricted it to the people of Madinah. They base their opinion on the Hadith of the Prophet (saw):

«المدينة كالكير تنفي خَبَثَها، ويَنْصَعُ طيبُها»

"The Madinah city cleanses all filth (Khabath)." (Bukhari & Muslim)

The Ulema also claim that Khabath (خبث) means mistakes and in this case the Hadith would also indicate that its people are free from mistakes. Since the people are free from mistakes, it follows that their Ijma' is considered valid.

The complete text of the Hadith is mentioned in Bukhari and Muslim. It relates that a bedouin gave the pledge of Islam to the Prophet (saw), he then became sick and said: O Prophet (saw), free me from the allegiance I gave to you. The Prophet (saw) rejected. The man then asked again and the Prophet (saw) again rejected, so he left the Prophet (saw) and became well. The Prophet (saw) said:

«إِنَّمَا الْمَدِينَةُ كَالْكِيرِ، تَنْفِي خَبَثَهَا، وَيَنْصَعُ طِيبُهَا»

"The city of Madinah is like the bellows (an instrument used by a blacksmith for blowing air into the fire to make the fire burn quickly). It cleanses its filth (Khabath) and its goodness will shine". (Bukhari, Muslim & Ahmad)

This Hadith indicates an attribute of the city of Madinah that it cleanses people, it does not indicate the people of Madinah as such. Furthermore, any mistake in Ijtihad cannot be considered as Khabath (filth) because there is no reward in this.

The Prophet (saw) has forbid Khabath (filth). In the following sayings of the Prophet (saw):

«الكلب خبيث و خبيث ثمنه»

"The Dog is Filth and the the price (money obtained from selling) of a dog is Khabith (filth)." (Muslim)

«مهر البغى خبيث»

"The dowry (money taken for Zina) of a whore or prostitute is Khabaith (filthy)." (Bukhari & Muslim)

«الخمر أم الخبائث»

"Alcohol is the mother of all Khabaith (filth)." (An-Nisai)

However, the Mujtahid would be rewarded even if he erred and made an error. For the Prophet (saw) said

« رفع عن أمتى الخطأ والنسيان وما استكرهوا عليه »
"My Ummah is not responsible for three things: mistakes, forgetfulness, and whatever is done under duress." (Ibn Majah)

So, Khabath cannot be considered as an error and Ijma' ahlel Madinah cannot be taken as infallible. Furthermore, the Hadith used to justify Ijma' ahlel Madinah is not Qata'i.

7.5 Istihsan

Istihsan literally means to approve or to do something preferable. It is a derivation of Hasuna, which means being good or beautiful. As a juristic term, Istihsan is defined as shifting from one Qiyas to another Qiyas due to a reason or suspending a Qiyas for a reason. A Mujtahid may take into consideration any of these options.

7.5.1 Types of Istihsan:

A. Istihsan by Qiyas- switching from a ruling of Qiyas to another ruling by Qiyas due to a stronger reason.

Example:
Imagine that Ahmad and Muhammad equally own a car. They sell their car to a friend, Ali for $1000. Ali pays Muhammad $400 as a first payment. However, before Muhammad could pay Ahmad his share, the money gets stolen. The ruling from Qiyas in this situation is that both Ahmad and Muhammad have to equally share the loss since they are partners.

The ruling from Istihsan by Qiyas is that Muhammad should incur the loss and not Ahmad. The reason is that Muhammad has the

option initially to tell Ali to pay Ahmad by himself. Thus, there is an assumption that Muhammad used this privilege of collecting Ahmad's share of the payment even though he had the option not to.

B. Istihsan by necessity - shifting to another Qiyas due to necessity.

Example:
There is a service offered by a business such as a dry cleaning store, which is a public service, and another service offered by an employee who is hired exclusively by someone for a private service such as a computer operator. Both parties are not liable for any unintentional damages, and this is a ruling from Qiyas. The ruling from Istihsan due to necessity is that the dry cleaning store should be liable since it is a public service but not the computer operator since he is a private employee. The necessity is that if the business is not liable then the employee hired for the public service may overload himself by taking up other jobs and may not be able to handle the responsibility.

C. Istihsan by Sunnah - Cancelling the Qiyas due to a contradiction caused by the Hadith.

Example:
The Prophet (saw) said who has Khuzaima as his witness it is enough for him, meaning that the testimony of that person (Khuzaima) equals the testimony of two people. While the ruling from Qiyas is to have two witnesses, the Qiyas is cancelled because this was a special situation for Khuzaima by the Prophet (saw).

D. Istihsan by Ijma as-Sahabah - Cancelling a ruling from Qiyas due to a contradiction caused by the Ijma' as-Sahabah.

Example:
Paying a company to manufacture items such as chairs. The ruling from Qiyas is that it is not allowed because the items under

discussion (e.g. chairs) are not present at the time of the contract. But the ruling from Qiyas is cancelled due to the Ijma' as-Sahabah. The first two types of Istihsan have no valid Daleel for their application. Technically, the third and fourth are not Istihsan; rather, they are ruling based on a Daleel from Sunnah and Ijma' as-Sahabah.

The proponents of Istihsan use the following Ayah to validate Istihsan:

الَّذِينَ يَسْتَمِعُونَ الْقَوْلَ فَيَتَّبِعُونَ أَحْسَنَهُ أُولَئِكَ الَّذِينَ هَدَاهُمُ اللَّهُ وَأُولَئِكَ هُمْ أُولُو الْأَلْبَابِ

"... And give glad tidings to those of My servants who listen to the word and follow the best of it. Those are the ones that Allah has guided and endowed with understanding." (TMQ Az-Zumar: 18)

وَاتَّبِعُوا أَحْسَنَ مَا أُنْزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ

"And follow the best of what has been sent down to you from your Lord." (TMQ Az-Zumar: 55)

These Ayahs do not authorise the use of Istihsan. Rather, the Ayah instructs us to follow the best statements, which were revealed, Qur'an. This is because the second part of the Ayah describes those who do as the ones that Allah (swt) has guided.

Imam Shafi'i used to say "Those who practice Istihsan are the Shar'i (legislator), and if Istihsan is allowed in this Deen then it should be allowed for any intellectual person to initiate laws for himself." (Al-Risala)

7.6 Masalih Al Mursalah

Literally, Maslahah means benefit or interest. As a juristic term Maslahah Mursalah refers to accepting public interest in the absence of ruling regarding an issue from the Qur'an or Sunnah.

7.6.1 Types of Masalih Al Mursalah

A. Maslahah cancelled by the text - Maslahah (benefit/interest), which is cancelled due to a ruling from the text. All agree that this kind of Maslahah is invalid.

Example:
One of the Khaleefahs had marital relations with his wife during the daytime in Ramadan. One of the Ulema advised the Khaleefah to fast two consecutive months as Kaffarah. Another 'Alim asked this 'Alim how he issued this ruling when the Khaleefah first must free one slave, and if he could not, then feed 60 people, and, if he cannot, then he should fast two consecutive months.

The 'Alim answered, that if he had ordered the first two punishments, then it would have been easy for the Khaleefah and he might have done the same act again. This form of Maslahah is invalid because a ruling on the issue already exists from Sunnah. The ruling is that if a person breaks his fast in Ramadan by having sexual intercourse with his wife, then he has to free a slave. If he can't, then feed 60 people, if he can't, then fast 60 days. This is based on a Hadith reported by Bukhari, Muslim, Ibn Majah and Abu Dawud. This order cannot be changed.

B. Maslahah approved by the Shari'ah - Benefit, which the Shari'ah does not forbid. As an example, allowing people to trade. This trade is the interest of the people and Qur'an allowed us to conduct trade. All agree that this type is valid.

C. Adopting Maslahah (benefit/interest) in an action from which there is no ruling from Qur'an and Sunnah.

For example compiling the Qur'an or cancelling the Hadd (punishment) for stealing during famine.

There is no debate amongst the Ulema on the first two types of Maslahah al Mursalah. But there is disagreement regarding the third type of Maslahah.

Some have accepted it within specific requirements while others have rejected it outright.

The Ulema who have accepted Maslahah al Mursalah give the following justifications:

A. Shari'ah, in general, came to satisfy the interests of the people in the correct manner.

B. Sahabah (ra) agreed through Maslahah (benefit/interest) to compile the Qur'an without having evidence either in the Qur'an or in the Sunnah to do so. This is among the many examples claiming that the Sahabah (ra) compiled the Qur'an due to its benefit but without a Daleel.

Regarding the first justification, it is true that the Shari'ah in general came for the interest of the Ummah, but we cannot use this argument as an 'Illah (cause) to justify every ruling. All the rulings from Qur'an, Sunnah, Ijma' as-Sahabah and Qiyas are there to satisfy our needs. In addition, a Muslim obeys and implements the rules as obedience to Allah (swt) and not because the rulings are easy, hard or connected with Maslahah (benefit). So we cannot use the benefit as a justification to legalise any action. There has to be evidence allowing such an action.

Regarding the second justification, by investigating all of these examples it will become obvious that the Sahabah (ra) understood the evidences thoroughly. The rules of Usul al-Fiqh were not written at the time. The Sahabah (ra) used to extract rulings because of their ability to understand both the language and text. We do not

observe any actions by them, which did not have grounds from the text.

Regarding the compilation of the Qur'an, it was not done because of Maslahah. The Sahabah (ra) understood that they had to do something to preserve the Qur'an and this is in compliance with the Ayah:

إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ

"Lo! We revealed the Reminder, and Lo! We verily are its Guardian." (TMQ Al-Hijr: 9)

In addition to the Ayah there is a Hadith asking Muslims to remove any harm or to avoid causing any harm. The Prophet (saw) said:

« لاَ ضَرَرَ وَلاَ ضِرَارَ »

"There is no Harm or Harming" (Bukhari & Muslim), meaning that harm is not allowed.

What can be a bigger harm than losing the Qur'an itself? What Uthman (ra) did by burning different copies of the Qur'an and maintaining only one copy fits under the command of the above mentioned Ayah and Hadith.

Regarding Umar's (ra) cancelling the Hadd for cutting the hand during famine, it is in agreement with the requirement for cutting a person's hand for stealing. One of the requirements is that if the crime of theft happens during the famine, then the Hadd is lifted. So, Umar (ra) simply implemented the requirement. The Prophet (saw) said:

« لأ قطع فى مخمصه »

"No cutting in famine."

Also, the Prophet (saw) instructed us not to apply the Hadd in case of doubt. Above all, from the definition of Hukm Shar'i, we should realise that it is the address of the Share', Allah (swt). Furthermore, it is well established from the Qur'an that Allah (swt) has perfected our Deen and chosen Islam as that Deen. This indicates that the Shari'ah is perfect. The concept of Maslahah, however, implies that there are some issues without rulings from Islam, and to fill this vacuum, we have to apply public interest. This concept is not correct and therefore, this type of Maslahah is invalid.

7.7 Laws revealed before Islam (Shar'a man qablana)

Those who say that the Shari'ah of the previous nations is a Shar'iah for the Muslims provide the following sayings of Allah (swt) as Daleels:

إِنَّا أَوْحَيْنَا إِلَيْكَ كَمَا أَوْحَيْنَا إِلَى نُوحٍ

"We have sent you Wahi, as we sent it to Nuh" (TMQ An-Nisa: 163)

شَرَعَ لَكُمْ مِنَ الدِّينِ مَا وَصَّى بِهِ نُوحًا

"He set for you from the Deen what He advised for Nuh" (TMQ Ash-Shura: 13)

ثُمَّ أَوْحَيْنَا إِلَيْكَ أَنِ اتَّبِعْ مِلَّةَ إِبْرَاهِيمَ

"Then We revealed to you, 'Follow the millah of Ibrahim.'" (TMQ An-Nahl: 123)

They claim that the above Ayat address the Muslims by the Shar'iah of the previous Prophets. They also state that Allah (swt) orders the Muslims to abide by everything the Messenger (saw) conveyed, except for issues specific to him and issues that were abrogated.

Based upon this understanding, they claim that the Muslims are addressed by the Shar'iah of previous nations because the Qur'anic text contains neither an exception nor an abrogation.

This argument stems from an incorrect understanding of the Ayat. The first Ayah means that Allah (swt) revealed the Wahi to Muhammad (saw) in the same manner that he revealed the Wahi to previous Prophets. The second Ayah means that Allah (swt) revealed to Muhammad (saw) the same Tawheed and fundamental beliefs that Nuh (as) was ordered to follow, and the third Ayah orders Muhammad (saw) to follow the fundamentals of Tawheed because the word 'Millah' refers to Tawheed. Similarly, Ayat like, "Follow the guidance they received," refer exclusively to the Tawheed, which is the core of the Deen that all Prophets and Messengers shared, but it does not refer to the Shar'iah that came with each message.

As for the saying of Allah (swt),

إِنَّا أَنْزَلْنَا التَّوْرَاةَ فِيهَا هُدًى وَنُورٌ يَحْكُمُ بِهَا النَّبِيُّونَ

"It was We who revealed the Torah: therein was guidance and light by which the Prophets ruled..." (TMQ Al-Maidah: 44)

It is addressing the Prophets of Bani Israel, not Muhammad (saw), because the Muslims have no Prophets but one. Regarding the narration of Abu Hurairah in which the Messenger of Allah (saw) said,

«الأَنْبِيَاءُ إِخْوَةٌ مِنْ عَلاَّتٍ، وَأُمَّهَاتُهُمْ شَتَّى، وَدِينُهُمْ وَاحِدٌ»

"The Prophets are brothers. Their mothers are different and their Deen is one." (Muslim)

The expression وَدِينُهُمْ وَاحِدٌ **"their Deen is one"** refers to the Tawheed or 'Aqeedah, which all the Messengers have. This does not mean that the entire message or Shar'iah prescribed to each nation is alike because Allah (swt) says:

لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا

"To each among you, We have prescribed a Shar'iah and a method." (TMQ Al-Maidah: 48)

Thus, the evidences that are used for justifying the Shar'iah of previous Prophets and nations as a legal source are not strong. Furthermore, there are evidences that prohibit following the previous Sharaa'i whether they are mentioned by the Qur'an and Hadeeth or otherwise.

Allah (swt) says:

وَمَنْ يَبْتَغِ غَيْرَ الْإِسْلَامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ

"If anyone chooses a Deen other than Islam, never will it be accepted of him" (TMQ Al-Imran: 85)

إِنَّ الدِّينَ عِنْدَ اللَّهِ الْإِسْلَامُ

"Verily the only Deen that is accepted by Allah is Islam." (TMQ Al-Imran: 19)

Both texts state that any Deen other than Islam is not accepted from anyone. Thus, it is not possible that Allah (swt) would require the Muslims to follow them. Allah (swt) also says:

وَأَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ وَمُهَيْمِنًا عَلَيْهِ

"To you We sent the Book with the truth, verifying the Book that came before it, and dominating it." (TMQ Al-Maida: 48)

The domination of the Qur'an over previous books cannot mean the verification of them because Allah (swt) used the word "verification" in the same Ayah. Thus, it means that the Qur'an

abrogates them all. Also Ijma' as-Sahabah on this matter indicate that the Islamic laws abrogated all previous ones.

In addition, Allah (swt) says:

أَمْ كُنْتُمْ شُهَدَاءَ إِذْ حَضَرَ يَعْقُوبَ الْمَوْتُ إِذْ قَالَ لِبَنِيهِ مَا تَعْبُدُونَ مِنْ بَعْدِي قَالُوا نَعْبُدُ إِلَهَكَ وَإِلَهَ آبَائِكَ إِبْرَاهِيمَ وَإِسْمَاعِيلَ وَإِسْحَاقَ إِلَهًا وَاحِدًا وَنَحْنُ لَهُ مُسْلِمُونَ (133) تِلْكَ أُمَّةٌ قَدْ خَلَتْ لَهَا مَا كَسَبَتْ وَلَكُمْ مَا كَسَبْتُمْ وَلَا تُسْأَلُونَ عَمَّا كَانُوا يَعْمَلُونَ

"Were you witnesses when death appeared before Ya'qoob? Behold he said to his sons, 'What will you worship after me? They said, 'We will worship your God and the god of your fathers, of Ibrahim, Isma'eel and Ishaq-the one true God: to Him do we submit.' That was an Ummah that passed away. They shall reap the fruit of what they did, and you of what you do. You shall not be asked about what they did." (TMQ Al-Baqarah: 133-4)

Allah (swt) states that the Muslims will not be questioned regarding the actions of the Prophets. Conveying the Shar'iah and acting upon it is a part of their actions which Muslims are not questioned for and the Muslims are not addressed by it, and it is not binding upon them. Also, Jabir narrated that the Messenger of Allah (saw) said:

«أُعْطِيتُ خَمْسًا لَمْ يُعْطَهُنَّ أَحَدٌ قَبْلِي كَانَ كُلُّ نَبِيٍّ يُبْعَثُ إِلَى قَوْمِهِ خَاصَّةً وَبُعِثْتُ إِلَى كُلِّ أَحْمَرَ وَأَسْوَدَ»

"I have been given five things which none before me was given: each Prophet was sent specifically to his people while I have been sent to every red and black." (Muslim)

Abu Hurairah narrated that Allah's Messenger (saw) said:

«فُضِّلْتُ عَلَى الأَنْبِيَاءِ بِسِتٍّ»

"I have been preferred over other Prophets with six things," one of which was that:

«وَأُرْسِلْتُ إِلَى الْخَلْقِ كَافَّةً»

"I am sent to all of creation." (Muslim)

The Prophet (saw) says that each Prophet before him (saw) was sent only to his people, which means no one else but their own people are responsible for their Shar'iah. None of the previous Prophets were sent to the Muslims. Therefore, their laws are not a Shar'iah for the Muslim Ummah.

This is supported by what is clearly mentioned in the Qur'an:

وَإِلَى ثَمُودَ أَخَاهُمْ صَالِحًا

"To Thamood, We sent their brother Saleh" (TMQ Hud: 61)

وَإِلَى عَادٍ أَخَاهُمْ هُودًا

"To 'Ad, we sent their brother Hud" (Al-Araf 7: 65)

وَإِلَى مَدْيَنَ أَخَاهُمْ شُعَيْبًا

"To Midian, We sent their brother Shu'ayb" (Al-Araf 7: 85)

The above show that the previous laws are not Shara'i for the Muslims for three reasons. First, the Daleels that are used refer only to the Tawheed and Aqa'id, and not the Shar'iah. Second, there are legal texts that prohibit following any Shar'iah except the Islamic Shar'iah. Third, each Prophet was sent specifically to his people.

The Muslims are not part of previous nations, the previous Prophets were not sent to the Muslims, and the Muslims are not addressed by their law and consequently not responsible for them. Thus, the law of previous nations is not considered as a source of rules.

Regarding the claim that Muslims have to follow everything that the Messenger (saw) mentioned. Allah (swt) ordered the Muslims to follow what the Messenger (saw) brought. The Messenger (saw) narrated the affairs of previous nations to learn and take lessons from the morale of their stories, and not to abide by their laws. The Messenger (saw) narrated to the Muslims the stories of the previous Prophets as well as information about other nations. He (saw) explained their situations and rules they were following just as a reminder, not as an order to follow their laws. The news about the nations' affairs and rules they were following were all mentioned as mere narrations to take lessons from and not as laws to follow.

Moreover, many of those rules contradict the Islamic Shar'iah in their details. If the Muslims were addressed by these laws, they would be addressed by two different Sharaa'i, which is impossible. For example, Allah (swt) says regarding Sulayman:

وَتَفَقَّدَ الطَّيْرَ فَقَالَ مَا لِيَ لَا أَرَى الْهُدْهُدَ أَمْ كَانَ مِنَ الْغَائِبِينَ (20)
لَأُعَذِّبَنَّهُ عَذَابًا شَدِيدًا أَوْ لَأَذْبَحَنَّهُ أَوْ لَيَأْتِيَنِّي بِسُلْطَانٍ مُبِينٍ

"And he took an account of the birds; and he said, 'Why is it I do not see the Hud? Or is he among the absentees? I will certainly punish him with a severe punishment, or execute him, unless he brings me a clear reason.'" (TMQ An-Naml: 20-21)
There is no disagreement among Muslims that there should be no punishment for birds, and all animals for that matter, even if they cause some harm. The clear text from the Messenger (saw) states:

«الْعَجْمَاءُ جَرْحُهَا جُبَارٌ»

"The transgression of animals is not accounted for." (Bukhari)

Thus, the transgression of animals as well as the birds is not compensated for.

Also, Allah (swt) addressed Musa (as):

وَعَلَى الَّذِينَ هَادُوا حَرَّمْنَا كُلَّ ذِي ظُفُرٍ وَمِنَ الْبَقَرِ وَالْغَنَمِ حَرَّمْنَا عَلَيْهِمْ شُحُومَهُمَا إِلَّا مَا حَمَلَتْ ظُهُورُهُمَا أَوِ الْحَوَايَا أَوْ مَا اخْتَلَطَ بِعَظْمٍ ذَلِكَ جَزَيْنَاهُمْ بِبَغْيِهِمْ وَإِنَّا لَصَادِقُونَ

"We forbade every (animal) with undivided hoof, and We forbade them the fat of the ox and the sheep, except what adheres to their backs of their entrails, or is mixed up with a bone." (TMQ Al-Anam: 146)

In the Islamic Shar'iah Allah (swt) made all of this Halal to the Muslims by saying, "And your food is made halal for them." The fat mentioned in the Ayah is part of the Muslims' food. Thus, it is allowed for them. The people of Zakariah also had their own Shar'iah as mentioned in the Qur'an.

Maryam's mother said:

إِنِّي نَذَرْتُ لَكَ مَا فِي بَطْنِي مُحَرَّرًا

"I vowed what is in my womb for you." (Al-Imran: 35)

This is Haram in Islam. Also, Allah (swt) addressed Ya'qoob:

كُلُّ الطَّعَامِ كَانَ حِلًّا لِبَنِي إِسْرَائِيلَ إِلَّا مَا حَرَّمَ إِسْرَائِيلُ عَلَى نَفْسِهِ

"All food was lawful to the Children of Israel, except what Israel made unlawful for himself" (TMQ Al-Imran: 93)

In Islam it is Haram for anyone to make anything Haram if Allah (swt) did not make it Haram:

لِمَ تُحَرِّمُ مَا أَحَلَّ اللَّهُ

"Why do you make unlawful that which Allah made lawful for you." (TMQ At-Tahrim: 1)

Similarly the Qur'an mentions the Shar'iah of the Kitabyeen during the days of the People of the Cave:

قَالَ الَّذِينَ غَلَبُوا عَلَى أَمْرِهِمْ لَنَتَّخِذَنَّ عَلَيْهِمْ مَسْجِدًا

"Those who prevailed over their affair said, 'Let us surely take a place of worship over them.'" (TMQ Al-Kahf: 21)

This is Haram in Islam because the Prophet (saw) said:

«إِنَّ أُولَئِكِ، إِذَا كَانَ فِيهِمُ الرَّجُلُ الصَّالِحُ فَمَاتَ، بَنَوْا عَلَى قَبْرِهِ مَسْجِدًا، وَصَوَّرُوا فِيهِ تِلْكِ الصُّوَرَ، أُولَئِكِ شِرَارُ الْخَلْقِ عِنْدَ اللَّهِ يَوْمَ الْقِيَامَةِ»
"Those are the people who, whenever a pious man dies amongst them, make a place of worship at his grave and then they make those pictures in it. Those are the worst creatures in the Sight of Allah." (Bukhari & Muslim)

In another Ayah, Allah (swt) addressed the people of Musa:

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ

"We ordained upon them: 'Life for a life, eye for an eye, nose for a nose, ear for an ear, tooth for a tooth, and wounds equal for equal.'" (TMQ Al-Maidah: 45)

Muslims do not follow this order. Instead, Islam obligates Muslims in this case to take al-Qawad, or the capital punishment against murder (within specific rules). Furthermore, Islam established the monetary compensation for any crime below this, as Allah (swt) says:

فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا

"If then anyone transgresses against you, transgress likewise against him." (TMQ Al-Baqarah: 194)

وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ

"And if you punish, let your punishment be proportional to the wrong that has been done against you." (TMQ An-Nahl: 126)

وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ

"And the punishment for a wrong deed is likewise." (TMQ Ash-Shura 42: 40)

Also, the meaning of the Ayah, "And wounds equal for equal," differs from the Qisas in Islam. Qisas in Islam is called Irsh, which is the monetary compensation for crimes against any part of the body. The Torah does not contain the acceptance of Irsh. Since many rules that applied to the previous Prophets and nations contradict the Islamic laws, the Muslims cannot be addressed by them.

It should not be said that only those rules mentioned above are abrogated by their corresponding Islamic rules. The reason for this is because the Islamic rules did not come to abrogate the previous rules on a case-by-case basis but rather came as a complete Shar'iah for humanity that has no relationship with the previous ones. Thus, the claim of case-by-case abrogation is invalid.

Moreover, as explained earlier abrogation is the invalidation of an existing rule in the text by a new text. For example, the Messenger (saw) says:

«كُنْتُ قَدْ نَهَيْتُكُمْ عَنْ زِيَارَةِ الْقُبُورِ، أَلاَ فَزُورُوهَا»

"I used to forbid you from visiting the graves, now you should visit them." (Muslim, Tirmidhï, Abu Dawud & al-Nasa'i)

The invalidation of an old rule by a new text is termed abrogation. In abrogation, the abrogated rule must have been revealed before the new rule, and the new rule must also contain a Daleel that it is abrogating the previous rule. If both conditions are not met, there is no abrogation. The mere disagreement or contradiction between two rules does not make one of them abrogate the other. Therefore, the rules mentioned regarding the previous Sharaa'i are not abrogated by their corresponding Islamic ones that conflict or contradict them. There is no Daleel for such a claim. Also, there is no relationship between the Islamic legislation and these rules. However, these rules are abrogated as part of the abrogation of the previous Sharaa'i as a whole. Thus, they do not need specific rules to abrogate them.

All of these evidences clearly illustrate the invalidity of the notion that the Muslims are responsible for everything that the Messenger (saw) conveyed. The Muslims are responsible and obligated to follow only the Shar'iah of Islam. The Muslims are not addressed with stories and affairs of the previous Prophets, nor are they addressed with the rules that the previous nations followed. Therefore, the Shar'iah of previous nations is neither a Shar'iah for the Muslims nor a legal source of legislation.

However, if there is another text that came with statements which includes a rule from the previous Sharaa'i indicating that Muslims are addressed by them, then this rule becomes part of the Islamic Shari'ah. Thus, Muslims are obliged to follow this rule because it is part of the Islamic Shari'ah, not because Muslims are obligated to follow the previous Sharaa'i. Muslims are obliged to apply the rule because Allah (swt) stated the text that indicates this rule is addressed to the Muslims.

Scrutinising the rules mentioned in the Qur'an and the Sunnah which are addressed to the previous Prophets indicates that the Muslims are also addressed by these rules in three situations:

1) If the Ayah which contains the rule begins by addressing the Muslims. For example, in the Ayah addressing the issue of hoarding wealth, Allah (swt) says:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّ كَثِيرًا مِنَ الْأَحْبَارِ وَالرُّهْبَانِ لَيَأْكُلُونَ أَمْوَالَ النَّاسِ بِالْبَاطِلِ وَيَصُدُّونَ عَنْ سَبِيلِ اللَّهِ وَالَّذِينَ يَكْنِزُونَ الذَّهَبَ وَالْفِضَّةَ وَلَا يُنْفِقُونَهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُمْ بِعَذَابٍ أَلِيمٍ

"O you who believe! There are many rabbis and priests who eat the wealth of people unjustly and they yasuddun (keep people away from) Allah's Path, and there are those who hoard the gold and silver and do not spend it in the cause of Allah. Promise them a severe punishment." (TMQ At-Tauba: 34)

Allah (swt) in this Ayah has addressed the Muslims therefore the rules that came in the Ayah are part of the Islamic Shari'ah. Based on this Ayah, hoarding wealth is Haram in the Islamic Shari'ah, even though the rule came as part of an Ayah which explains the status of priests and rabbis.

2) If the Ayah which includes the rule has one of the words that imply a general connotation, such as the Ayat of ruling with other than Allah's rules. Allah (swt) says:

وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ

"Whoever (waman) rules by other than what Allah has revealed, then those are the Dhalimoon (oppressors)." (TMQ Al-Maidah: 45) The word "Mann" in Arabic establishes a general connotation. Thus, the Muslims are addressed by this Ayah.

3) If the Ayah which includes the rule, ends with something that directs the attention of Muslims to the rule. For example, in the Ayat of Surah al-Qasas which alludes to the position and practices of Qaroon. The Ayat start by saying:

إِنَّ قَارُونَ كَانَ مِنْ قَوْمِ مُوسَى فَبَغَى عَلَيْهِمْ وَآتَيْنَاهُ مِنَ الْكُنُوزِ مَا إِنَّ مَفَاتِحَهُ لَتَنُوءُ بِالْعُصْبَةِ أُولِي الْقُوَّةِ إِذْ قَالَ لَهُ قَوْمُهُ لَا تَفْرَحْ إِنَّ اللَّهَ لَا يُحِبُّ الْفَرِحِينَ (76) وَابْتَغِ فِيمَا آتَاكَ اللَّهُ الدَّارَ الْآخِرَةَ وَلَا تَنْسَ نَصِيبَكَ مِنَ الدُّنْيَا وَأَحْسِنْ كَمَا أَحْسَنَ اللَّهُ إِلَيْكَ وَلَا تَبْغِ الْفَسَادَ فِي الْأَرْضِ إِنَّ اللَّهَ لَا يُحِبُّ الْمُفْسِدِينَ

"Qaroon was from the people of Musa; however he transgressed over them. And We gave him of the treasures, that of which the keys would have been a burden to a body of strong men. When his people said to him, 'Do not be glad (with ungratefulness to Allah's Favors). Verily! Allah likes not those who are glad (with ungratefulness to Allah's Favors).' But seek, with that (wealth) which Allah has bestowed on you, the home of the Hereafter, and forget not your portion of legal enjoyment in this world, and do

good as Allah has been good to you, and seek not mischief in the land. Verily, Allah likes not the Mufsidoon." (TMQ Al-Qasas: 76-77)

قَالَ إِنَّمَا أُوتِيتُهُ عَلَى عِلْمٍ عِنْدِي أَوَلَمْ يَعْلَمْ أَنَّ اللَّهَ قَدْ أَهْلَكَ مِنْ قَبْلِهِ مِنَ الْقُرُونِ مَنْ هُوَ أَشَدُّ مِنْهُ قُوَّةً وَأَكْثَرُ جَمْعًا وَلَا يُسْأَلُ عَنْ ذُنُوبِهِمُ الْمُجْرِمُونَ(78) فَخَرَجَ عَلَى قَوْمِهِ فِي زِينَتِهِ قَالَ الَّذِينَ يُرِيدُونَ الْحَيَاةَ الدُّنْيَا يَا لَيْتَ لَنَا مِثْلَ مَا أُوتِيَ قَارُونُ إِنَّهُ لَذُو حَظٍّ عَظِيمٍ

"He said, 'This has been given to me only because of knowledge I possess.' Did he not know that Allah had destroyed generations before him, men who were stronger than him in might and greater in the amount they had collected? But the Mujrimoon will not be questioned of their sins (because Allah knows them well, so they will be punished without account). So he went forth before his people in his pomp. Those who were desirous of the life of the world said, 'Ah, would that we had the like of what Qaroon has been given. Verily! He is the owner of a great fortune." (TMQ Al-Qasas: 78-79)

وَقَالَ الَّذِينَ أُوتُوا الْعِلْمَ وَيْلَكُمْ ثَوَابُ اللَّهِ خَيْرٌ لِمَنْ آمَنَ وَعَمِلَ صَالِحًا وَلَا يُلَقَّاهَا إِلَّا الصَّابِرُونَ (80) فَخَسَفْنَا بِهِ وَبِدَارِهِ الْأَرْضَ فَمَا كَانَ لَهُ مِنْ فِئَةٍ يَنْصُرُونَهُ مِنْ دُونِ اللَّهِ وَمَا كَانَ مِنَ الْمُنْتَصِرِينَ (81) وَأَصْبَحَ الَّذِينَ تَمَنَّوْا مَكَانَهُ بِالْأَمْسِ يَقُولُونَ وَيْكَأَنَّ اللَّهَ يَبْسُطُ الرِّزْقَ لِمَنْ يَشَاءُ مِنْ عِبَادِهِ وَيَقْدِرُ لَوْلَا أَنْ مَنَّ اللَّهُ عَلَيْنَا لَخَسَفَ بِنَا وَيْكَأَنَّهُ لَا يُفْلِحُ الْكَافِرُونَ

"But those who had been given knowledge said, 'Woe to you! The reward of Allah is better for those who believe and do righteous good deeds, and this none shall attain except those who are patient.' So We caused the earth to swallow him and his dwelling place. Then he had no group or party to help him against Allah, nor was he one of those who could save themselves. And those who had desired his position the day before began to say, 'Know you not that it is Allah Who enlarges the provision or restricts it to whomsoever He pleases of His slaves. Had it not been that Allah was Gracious to us, He could have caused the earth to swallow us up (also)! Know you not that the disbelievers will never be successful.'" (Al-Qasas 28: 80-82)

In those Ayat, Allah (swt) is talking about Qaroon, and they are immediately followed by the Ayat which state:

تِلْكَ الدَّارُ الْآخِرَةُ نَجْعَلُهَا لِلَّذِينَ لَا يُرِيدُونَ عُلُوًّا فِي الْأَرْضِ وَلَا فَسَادًا وَالْعَاقِبَةُ لِلْمُتَّقِينَ

"We will grant the Hereafter to those who do not seek arrogance or mischief in the earth, and the good end is for the Mutaqeen (pious). He who comes with the Hasana will be rewarded better than it..." (TMQ Al-Qasas: 83)

The last two Ayat started addressing the Prophet (saw) and the Muslims, which means that they direct the attention of the Muslims to Qaroon and to the rules mentioned in the Ayat discussing him. Qaroon was from those who sought arrogance in the earth. Thus, the Muslims are addressed by the same rules.

In these three situations, the rules mentioned in these Ayat are a part of the Islamic Shari'ah because there are texts indicating that the Muslims are addressed by it.

The following Hadith reiterates the point that we are obliged to follow the Shariah revealed to Muhammad (saw) and not any other.

Jabir ibn Abdullah narrated that Umar Ibn al-Khattab brought a copy of the Torah to the Prophet (saw) and said: "O Messenger of Allah, this is a copy of the Torah." But [the Prophet] kept silent. Then Umar started reading and the face of the Prophet kept changing. So, Abu Bakr interrupted him violently: "Don't you see the face of the Messenger (saw)?" Umar looked at the Prophet's face and said, "May Allah preserve me from His anger and from the anger of his Messenger (saw), we accepted Allah as Lord and Islam as religion and Muhammad as Prophet." Then the Prophet (saw) said:

« وَالَّذِى نَفْسُ مُحَمَّدٍ بِيَدِهِ لَوْ بَدَا لَكُمْ مُوسَى فَاتَّبَعْتُمُوهُ وَتَرَكْتُمُونِى لَضَلَلْتُمْ عَنْ سَوَاءِ السَّبِيلِ ، وَلَوْ كَانَ حَيًّا وَأَدْرَكَ نُبُوَّتِى لاَتَّبَعَنِى »

"By the One Who owns Muhammad's soul, if Musa (as) appeared to you and you followed him and left me, you would go astray from the right path and if he were alive and reached [the time of] my prophethood he would have followed me."[26]

[26] Tirmizi 194; Darimi 1/435 and Mishkat, 1/20

Ijtihad

Ijtihad (إجتهـاد) is derived from the root word Jahada. Linguistically, it means striving or self-exertion in any activity, which entails a measure of hardship. The great scholars of Usul such as Abu al-Husayn Ali otherwise known as Al-Amidi (d. 631 AH) and Mohammad bin Ali Al-Shawkani (d. 1255 AH) defined it as, **'the total expenditure of effort made by a jurist in order to infer, with a degree of probability, the rules of Shariah from their detailed evidence in the sources.'**[27]

Others add, **'in a manner the Mujtahid feels unable to exert any more effort'** to this definition. Essentially as a juristic term, Ijtihad means exhausting all of one's efforts in studying a problem thoroughly and seeking a solution for it from the sources of Shari'ah.

This Usuli definition of Ijtihad was derived from the evidences which discuss Ijtihad and establish its obligation such as the Ahadith mentioned earlier. Unfortunately some today believe that Ijtihad is a mere personal reasoning of an individual and have abandoned this definition of the Usuli scholars which had been established for centuries. The consequence of this is that people mistakenly think that Islam doesn't contain a process to derive rules for modern problems. Therefore, when talking about Ijtihad it is paramount that we refer to the established Usuli definition rather than how the term is misused today.

A person who performs Ijtihad is a Mujtahid; whereas, a person who knows the rules of Shari'ah in detail, but is unable to extract the rules directly from their sources, is not a Mujtahid but rather a Faqih (jurist), Mufti or a Qadi (judge).

The text of the Qur'an and Sunnah which are Qata'i (conclusive) in meaning provide only one understanding. Any Ijtihad on these

[27] Amidi, Ihkam, IV, 162; Shawkani, Irshad, p. 250.

types of text will render only one meaning. The texts related to issues such as Riba or murder, are clear in their prohibition of these things. No Mujtahid can claim that Riba or murder is allowed, because the text only offers one meaning. To reject these Ahkam or any others established through Qata'i Thuboot and Qata'i Dalalah is Kufr (disbelief) as it would be a rejection of the definitive revealed rule from Allah (swt). Thus those who reject that the five times daily prayer (Salah) are Fara'id (obligations) or that ruling by whatever Allah is revealed is obligatory undoubtedly become Kuffar (disbelievers) even if they were knowledgeable scholars (Ulema) who had committed the entire Qur'an and all the Ahadith (narrations) to memory.

Ijtihad does not occur except in the Ahkam Shar'iah whose daleel is speculative (Dhanni) and not when the rule is decisive (Qata'i).[28]

When it comes to the area in which Ijtihad is permitted it is important to realise that it does not occur after a brief look at the Shar'iah texts, rather it means that the Mujtahid struggles to his utmost in such a manner that the jurist feels an inability to exert himself further in order to derive the Hukm of Allah. If the jurist has failed to discover the evidence which he was capable of discovering, his opinion is void.[29]

Therefore if one claimed to have made Ijtihad upon an issue after only studying one text related to it and ignored all other relevant texts even though they were readily available, this would not be considered legitimate Ijtihad.

The issues related to the 'Aqeedah are based on Adilla Qata'iya (decisive evidences) and there is only one correct understanding for it, not several. Thus, no Mujtahid can deduce another 'Aqeedah of Islam. There is only one correct view with regards to these matters and anyone who differs from it is a Kafir.

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[28] Shawkani, Irshad, p. 250; Zuhayr, Usul, IV, 223-25; Badran, Usul, p. 471.
[29] Ghazali, Mustasfa, II, 102; Amidi, Ihkam, IV, 162.

As Shawkani explained, the Ulema are in agreement that in regard to the essentials of Aqeeda, such as the oneness of Allah (tawhid), His attributes, the truth of the Prophethood of Muhammad, the hereafter, and so on, there is only one truth and anyone, whether a mujtahid or otherwise, who takes a different view automatically renounces Islam.[30]

Therefore people such as the followers of Mirza Gulam Ahmad Qadian who believe he was a prophet and Salman Rushdie who defamed Muhammad (saw) are definitely Kuffar (disbelievers) and cannot be called Mujtahids at all.

From multiple verses of the Qur'an we understand that Allah (swt) has addressed humanity directly. Therefore for the one who has heard the address of the Legislator, Allah (swt) - it becomes incumbent on him to believe in it and understand it. It also becomes incumbent on him to act upon it, because it is a Shar'iah rule. So in principle a Muslim should understand the Hukm (rule) of Allah from the speech of the Legislator directly. This is because the speech has been directed at all people by the Legislator and not only at the Mujtahidin or the Ulema but all the Mukallafin (those who are legally responsible). Thus it became an obligation on the Mukallafin to understand this speech so as to be able to act upon it, since it is impossible to act upon the speech without comprehending it. Therefore, the inference (Istinbat) of Allah's Hukm became Fard on all the Mukallifin i.e. Ijtihad became Fard on all the Mukallafin (legally responsible). Consequently, the basis of a Mukallaf (legally responsible) should be that he adopts the Hukm of Allah himself from the speech of the Legislator because he has been addressed by this speech.

However, the reality of the Mukallifin (legally responsible) is that there is a disparity in their understanding and comprehension and in their aptitude for learning. They also differ in terms of

[30] Shawkani, Irshad, p. 259

knowledge and ignorance. Therefore, it is impossible for all of them to deduce Shar'ai rules from the evidences i.e. it is impossible for all Mukallafin to be Mujtahidin. There is a similarity in this respect to other sciences, not everyone can become a doctor, physicist or chemist due to the disparity of people's aptitude for learning. Hence the obligation of Ijtihad becomes one of sufficiency ('ala al-Kifaya). If some undertake it the rest are absolved of the sin. Therefore, it became obligatory for Mujtahidin to exist in the Ummah who can derive the Shar'iah rules for all situations. Futhermore there are various evidences that prove the permissibility of Taqleed (following the opinions of a Mujtahid), these are elaborated in the chapter entitled 'Taqleed'.

To say that the doors of Ijtihad are closed is completely incorrect, this was a serious error that some Ulema mistakenly called for in history and clearly contradicts the Shar'iah. The Shar'iah texts exist today as they existed in the past, therefore Ijtihad is not only possible, it is necessary and a Fard ul Kifaya (duty of sufficiency), as was proven earlier.

Shawkani articulated this brilliantly when he said: "It is utter nonsense to say that Allah Almighty bestowed the capacity for knowledge and Ijtihad on the bygone generations of Ulema but denied it to the later generations." "What the proponents of Taqlid are saying to us is that we must know the Qur'an and the Sunnah through the words of other men while we still have the guidance in our hands. Praise be to Allah, this is the greatest lie (Buhtanun 'azim) and there is no reason in the world to vindicate it."[31]

The doors of Ijtihad are open but not for the ignorant, they are open until the day of judgement for the people of knowledge who have the capability to perform it as knowledge is the key to the door of Ijtihad.

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[31] Shawkani, Irshad, p. 254

8.1 Evidences for Ijtihad from the Sunnah

The Sahabah (ra) used to make Ijtihad in the time of the Messenger of Allah (saw) and differ in their deduction of Ahkams and the Messenger (saw) accepted this. This can be seen in the following incidents:

1) Bukhari narrated from Aisha that when the Prophet (saw) returned from the battle of Khandaq (ditch) and laid down his arms and took a bath. Jibreel came and said, "You have laid down your arms? By Allah, we angels have not laid them down yet. So set out for them." The Messenger (saw) asked, **"where to go?"** so Jibreel pointed towards Banu Qurayzah. The Prophet (saw) instructed the Mu`azzin to give Azan and so he announced to the people:

« من كان يؤمن بالله و اليوم الأخر فلا يصلين العصر الى فى بنى قريظه»

"Whosoever believes in Allah and the Day of judgement he should not pray Asr except in Bani Qurayzah."

So thy headed towards the fortresses of Bani Qurayzah, however they had different understandings of what the Messenger (saw) had said to them. Some took the literal meaning and they did not pray until they reached Bani Qurayzah after Maghrib. And others took it to mean that they should go there quickly, so they prayed Asr in Madinah or on the way. When the Messenger (saw) heard about this he accepted the action of all them.[32]

2) The saying of the Prophet (saw) when he sent Mu'adh as Qadi to Yemen:

[32] Bukhari: 894, 3810 Muslim: 3317

«كَيْفَ تَقْضِي إِذَا عَرَضَ لَكَ قَضَاءٌ؟ قَالَ: أَقْضِي بِكِتَابِ اللَّهِ. قَالَ: فَإِنْ لَمْ تَجِدْ فِي كِتَابِ اللَّهِ؟ قَالَ: فَبِسُنَّةِ رَسُولِ اللَّهِ ρ . قَالَ: فَإِنْ لَمْ تَجِدْ فِي سُنَّةِ رَسُولِ اللَّهِ ρ وَلاَ فِي كِتَابِ اللَّهِ؟ قَالَ: أَجْتَهِدُ رَأْيِي وَلاَ آلُو»

"By what will you pass judgement?' He said: By the Book of Allah. The Prophet (saw) said: **If you do not find it there?** He said: By the Sunnah of the Messenger of Allah (saw). He said: **And if you do not find it?** He said: 'I will exercise my own Ijtihad'. He (saw) said:

«الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ رَسُولِ اللَّهِ لِمَا يُرْضِي رَسُولَ اللَّهِ»

"Praise be to Allah who has made the messenger of the Messenger of Allah to accord with what Allah and His Messenger loves."[33]

3) The Hadith of the Messenger (saw):

« إذا حكم الحاكم فاجتهد ثم أصاب فله أجران وإذا حكم فأخطأ فله أجر»

"If a judge passes judgment and makes Ijtihad and he is right then he will have two rewards. And if he makes a mistake he will have one."[34]

4) The Messenger of Allah (saw) made Sa'd b. Mu'adh to judge over Bani Qurayzah so he gave the judgment that they should be killed and their offspring to be taken prisoners. The Messenger (saw) said:

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[33] Ahmad: 5/230, Abu Dawud: 3592, At-Tirmizi: 1327. Al-Hafiz said in his Talkhees: Ibn Tahir said: "It has two lines of transmission both of which are not authentic." At-Tirmizi said: "He does not know of this hadith except from this line of transmission. The Isnad (chain) is not Muttasil (connected throughout) but it has become well known amongst the people and their acceptance of it has strengthened it.

[34] Agreed upon (Muttafaq a'alayh) from the hadith of 'Amr b. al-'Aas and Abu Hurayrah. Bukhari: 7352, Muslim: 1716.

« لقد حكمت بحكم الله من فوق سبعة أرقعة »

"You have given a judgment that is from above the seven heavens."[35]

From these examples we can see that the Sahabah used to make Ijtihad in the time of the Messenger (saw) and that he used to accept their Ijtihads and tell them that the one who got it right will get two rewards while the one who got it wrong will get one.

8.2 Evidences for Ijtihad from Ijma as-Sahabah

After the Messenger (saw) there are numerous and elaborate Ijtihads in the time of the Sahabah. Even amongst the general masses Ijtihad was widespread and that was not considered strange because they were the original Arabs who spoke pure Arabic. Once while giving a Khutbah Umar b. Khattab tried to limit the dowry (Mahr) but a women responded from behind the lines by quoting the Ayah:

وَإِنْ أَرَدْتُمُ اسْتِبْدَالَ زَوْجٍ مَكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ قِنْطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا

"But if you intend to replace a wife by another and you have given one of them a Qintar (of gold i.e. a great amount) as Mahr, take not the least bit of it back.." (TMQ An-Nisa: 20)

She told him from her understanding of the word Qintar which denotes many without restriction that it is not allowed for him to restrict the doweries. He (may Allah be pleased with him) said: "The woman is right and Umar is wrong."

[35] Muslim: 1761, Ahmad: 2/22

An Ijma (consensus) of the Sahabah has taken place on the question of judging by an opinion which has been deduced from the Shar'ai evidence i.e. they agreed on the use of Ijtihad for any incidents that took place for which no (clear) text had been found. This is what reached us in successive reports in which there is no doubt. One such report is the saying of Abu Bakr (ra) when he was asked about the Kalala. He said: "I will speak about it according to my opinion. If it is correct then it is from Allah. If it is a mistake then it is from me and from Shaytan and Allah has nothing to do with it. Kalala is the one who has no children or parents left."[36]

His statement, "I will speak about it according to my opinion" does not mean this opinion is from him. Rather it meant Abu Bakr would express his opinion according to what he understood from the expression 'Kalala' in the verse of the Qur'an:

وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً

"If the man or woman whose inheritance is in question has left neither ascendants nor descendants…" (TMQ An-Nisa:12)

Kalala in the Arabic language applies to three people; the one who did not leave a child or parent, the one who has neither a child or parent (in terms of the left people), and the relatives from other than the child or father. Abu Bakr (ra) made Ijtihad as to which meaning is referred to here.

Another example of Ijtihad is that Abu Bakr (ra) gave a share of the inheritance to the mother's mother and not the father's mother. Some of the Ansar said to him: "You give inheritance to a woman from a deceased woman who would not inherit from her if she died. Yet you ignored a woman, who if she had died, would have inherited everything she left behind." So Abu Bakr (ra) gave both grandmothers equal share in the inheritance.

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[36] Amidi, Ihkam, IV, 187; Ibn al-Qayyim, I`lam, I, 177.

A famous example of Ijtihad is what Ali (ra) said regarding punishment (Hadd) for the crime of drinking alcohol. He said: "Whoever drinks it will speak nonsense, and who did so would fabricate lies, so I see that he must be punished like the fabricator of lies." Ali (ra) made an analogy between drinking and fabrication because he understood from Shar'a that it could be considered that which is likely to happen to be the same as that which actually happens.

All these are examples of Ijtihad from the time of the Sahabah and Ijma as-Sahabah on the issue of Ijtihad. The fact that the Companions resorted to Ijtihad in the absence of a text is established by continuous testimony (Tawatur).[37]

Al-Qurtubi says in his Tafseer: "The Sahabah still continued to differ regarding the rules of the incidents, though they remained in harmony." Al-Baghdadi reported the following saying of Umar b. 'Abdul-'Azeez in his book 'Al-Faqeeh wal Mutafaqqih': "I would have not been pleased if the Ashab (companions) of Muhammad did not differ, because if they did not differ, there would not have been a permission (for us to differ)."

8.3 Qualifications for performing Ijtihad

The earliest complete account of the qualifications of a Mujtahid is given in Abu' Husayn al-Basri's (d. 436/1044) al-Mu'tamad fi Usul al-Fiqh. The broad outline of al-Basri's exposition was later accepted, with minor changes, by al-Shirazi (d. 467/1083), al-Ghazali (d. 505/1111) and al-Amidi (d. 632/1234). This does not mean that the requirements of Ijtihad received no attention from the Ulema who lived before al-Basri, however they did not see it necessary to lay down the conditions for Ijtihad in this manner.

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[37] Ghazali, Mustasfa, II, 106; Ibn al-Qayyim, I'lam, I, 176.

The Hanafi jurists, Fakhr al-Islam 'Ali b. Muhammad al-Bazdawi (d.483 A.H.) and `Ubaydullah ibn Mas'ud Sadr al-Shar'iah both stated that to perform Ijtihad a jurist should have knowledge of the Qur'an together with its meaning, dictionary and legal, and its various divisions, of the traditions (Hadith) including the texts and authorities thereof, and of the rules of analogical deduction (Qiyas).[38]

The following are the qualifications needed to perform Ijtihad, these qualifications are derived from the definition of Ijtihad which is based on specific evidences as explained earlier:

A. The Mujtahid must be a Muslim male or female of sound mind who has attained a high level of intellectual competence.

B. Since the text of the Qur'an and Sunnah were revealed in the Arabic language, Ijtihad can only be performed based on the Arabic text. One must have knowledge of the Arabic language to the extent that it enables a correct understanding of the Qur'an and the Sunnah. A complete command in Arabic is not a requirement for some kinds of Mujtahideen, but the Mujtahid must, at least, know the fine points of the language related to the subject at hand. He must also be able to comprehend the sources accurately and deduce the rule from them. He should know enough by which he can understand the circumstances of the Arabs, the current customary usage in their speech such that he can distinguish the textual indications (Dalaalat al-alfaaz) in terms of the following: congruence (Mutaabaqah), inclusivity (Tadmeen), requisite (Iltizaam), Mufrad (singular), Murakkab (construct), comprehensive (Kulli), partial (Juz'i), Haqeeqah (literal), Majaaz (metaphorical), homonym (Ishtiraak), synonym (Taraaduf), uttered meaning (Mantuq) and implied meaning (Mafhum) etc.

C. The Mujtahid also needs to be knowledgeable of the Qur'an, the Makki and Madani contents of the Qur'an, the occasion of their

[38] Usul al-Bazdawi, Vol IV p. 1135, al-Tawdih fi Hall Jawamid al-Tanqih, p. 382.

revelation (Asbab al Nuzul) and must have a full grasp of the legal contents of the Qur'an, but not necessarily of the narratives and parables of the Qur'an and its passages relating to the Hereafter. The knowledge of the Ayat ul Ahkam (verses regarding rules) includes knowledge of the related commentaries (Tafsir) with special reference to the Sunnah and the views of the Sahabah (ra) related to the subject at hand. According to some Ulema, including al-Ghazali, Ibn al-Arabi, and Abu Bakr al-Razi, the legal ayat of the Qur'an which the mujtahid must know amount to about five hundred. Shawkani and others, however observe that a specification of this kind cannot be definitive.

D. The Mujtahid must possess an adequate knowledge of the Sunnah, especially the part relating to his Ijtihad and be familiar with the rulings in the Sunnah. The Mujtahid must also know the incidents of abrogation in the Sunnah and the reliability of the narrators of Hadith.

E. He must have knowledge of Usul al-Fiqh so that he will be acquainted with the procedures for extracting the rulings from the text and the implications.

F. The Mujtahid should be aware of the opinions of different Mujtahideen, if any exist. It is essential for a Mujtahid to be familiar with the Daleels of other Mujtahideen, on a particular issue as how the other Mujtahid understood the Daleel and the issue.

G. Finally, he must have a comprehensive knowledge of the issue on which Ijtihad is being performed. To extract any ruling one has to understand the subject thoroughly. If the Mujtahid does not understand an issue, he is not allowed to do Ijtihad regardless of where he lives. To understand the issue, the Mujtahid can go to experts. For instance, there might be an issue in genetic engineering. To understand the process of genetic engineering, the Mujtahid can go to an expert in this field.

Therefore, these criteria are enough to qualify one to do Ijtihad, and it is incorrect to say that each issue requires the Mujtahid to reside in that environment.

The Mujtahid can reside anywhere and do Ijtihad as long as he is familiar with the issue being dealt with. If the Mujtahid is not familiar with the issue, he is not allowed to do Ijtihad, even if the issue occurs in the same environment that the Mujtahid is residing in.

8.4 Types of Mujtahid

A. Mujtahid Mutlaq (Absolute Mujtahid)

The founders of various schools of Islamic Fiqh such as Abu Hanifah, Shafi'i, Ahmad bin Hanbal, Malik, Jafar and others are considered Mujtahideen Mutlaq. This category of Mujtahideen set up their own Usul al-Fiqh to extract the Ahkam (rules) and are not restricted by others i.e. they are independent.

B. Mujtahid within a Madhab

These Mujtahideen follow the Usul al-Fiqh set up by the Mujtahid Mutlaq to extract the Ahkam (rules); e.g. Imam Abu Yusuf adhered to Imam Abu Hanifah's methodology.

These Mujtahideen, within a Madhab, generally followed the guidelines of their respective schools to extract rulings. Nevertheless, they did not consider themselves bound to follow their Imams in the implementation of particular issues. This is borne out by the fact that they have held opinions that were opposed to those of their leading Imams. As a matter of fact, some Mujtahideen such as Imam Abu Yusuf reached to the level of Mujtahid Mutlaq, but didn't form his own Madhab out of respect for Imam Abu Hanifah.

C. Mujtahid in particular issues only (Mujtahid Mas'ala)
This Mujtahid would be able to handle one single issue while he may be unable to handle another. In other words, the Mujtahid would be able to study the opinion of other jurists and trace their Adilla (evidences) but may be unable to establish new opinions for new issues.

Scholars like Abu'l-Hasan al-Karkhi and Abu Ja'far al-Tahawi in the Hanafi school, Abu al-Fadl al-Marwazi and Abu Ishaq al-Shirazi in the Shafi'i, Abu Bakr al-Abhari in the Maliki and 'Amr b. Husayn al-Khiraqi in the Hanbali schools have been placed it this category.

8.5 Reasons for differences of opinion among the Mujtahideen

The word Madhab means "school of Fiqh". The following are some of the reasons for the existence of Madhahib (schools of Fiqh).

8.5.1 Differences in the legislative sources

A. Criteria in evaluating the Sunnah:

One Mujtahid may consider a certain Hadith authentic while others may not. This is due to their differences in the criteria for judging the authenticity of the Hadith.

Example:
The Hadith narrated by Amr b. Shuaib which mentions: "A woman came to the Prophet (saw) along with her child with two gold bracelets in her hand. He (saw) said: 'Do you give the Zakat upon these?' She said: 'No.' He (saw) said: 'Would you like that Allah makes them into bracelets of Fire?'"

Some scholars consider this to be an authentic Hadith, while others consider it a weak Hadith due to the weakness in the Isnad. The scholars who said that there is no Zakah on jewellery are Aisha bint

Abu Bakr (ra) Imam Jabir, Ibn Umar, Imam Malik, Imam Ahmad and Imam Shafi'i.

Furthermore, one Mujtahid may know of a Hadith while another may not. It is due to this reason that the Mujtahideen used to say to their students, if you find a Hadith after you leave me, and it contradicts what I have told you, throw away my understanding and follow the Hadith.

Example: It is not permitted for a woman while she is menstruating to perform Tawaaf (circling around the Ka'aba). Based on this, Umar (ra) used to forbid women from completing the Hajj even if the menstruating started after leaving Arafat, which is the most important part of the Hajj. When he (ra) was informed that the Prophet (saw) used to allow women to continue performing Hajj under similar situations, Umar (ra) subsequently lifted the ban, and allowed the woman to complete her Hajj.

B. Differences in the Sahabah's (ra) opinions as individuals

Some scholars accepted the opinion of one Sahabi as a legislative source, while others treated the Sahabah (ra) as Mujtahids whose individual opinions were not legally binding.

C. Differences in the practice of Qiyas

Some scholars practiced Qiyas (see section 6.0) while others practiced Istihsan (see section 7.5).

D. Differences in Ijma' (Consensus of the Companions)

Some scholars used Ijma' as-Sahabah only, while others used Ijma' Ahlel Madinah (People of Madinah), Ijma' Al-Mujtahideen, and various other types of Ijma' as well as discussed earlier.

E. Differences in other Legislative Sources

Some Scholars used Maslahah Mursalah and other non definitive principles while others did not. This contributed to more differences among the scholars.

8.5.2 Differences in Interpreting the Text itself

A. Literalists

Some scholars took the literal understanding of the text, meaning that they took the text at its surface value, refusing to take deeper understandings. Some of these scholars were called Zahiris, or those who took only the apparent meanings of the texts.

B. Those who saw deeper meanings in the text

In addition to the apparent meaning, some Scholars took deeper and implicit meanings in the texts.

8.5.3 Differences in Methodology of Usul al-Fiqh

There were differences in interpreting the forms and types of commands. For example, in the Hadith regarding the beard, there is a difference of opinion among the Scholars regarding whether the Hadith indicates Fard, Mandub or Mubah commands. For example, Ibn Taymiyya and Ibn Hazm said it is Fard. Ibn Qudamah, Shawkani, an-Nawawi and Qadi Iyad said it is recommended. Qadi Abu Bakr Ibn al-Arabi and Imam Qurtubi's opinion was that it is only permitted.

8.5.4 Differences in Understanding the Arabic Language

This may be due to a different understanding of the Arabic text where it offers more than one meaning. As an example, Allah (swt) says in the Qur'an, in translation:

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ

"The divorced woman should wait for a period of three Quru" (TMQ Al-Baqarah: 228)

Quru' linguistically could mean the beginning of the menstruation period, and it could also mean the beginning of the purity period. The difference between these three Quru's from the beginning of menstruation and three Quru's from the beginning of the purity period is about 7 to 15 days.

Some scholars say Quru' means the purity period because of a Hadith in which the Prophet (saw) instructed a woman to wait for the purity period. Other Scholars say that this Hadith is not authentic considered the Qur'an to mean the beginning of menstruation.

Besides all of this, one has to remember that the level of understanding of the text and the depth of thinking varies from one individual to another. These differences are a natural aspect of Allah's creation and a mercy from Him (swt).

It is for these reasons that we have different scholars forming different Schools of Fiqh. Some of these scholars had students who wrote their understanding of the text and these writings were considered as their Madhahib. These include Abu Hanifah, Malik, Shafi'i, Ibn Hanbal, Jafar, and Zayd. Other scholars did not have the opportunity of having students write their understanding of the text, and these include Al-Awza'i, al-Hasan al-Basri, Sufyan al-Thawri, Ibn Jarir al-Tabari, Laith and others.

These examples illustrate that there have always been differences of opinion. The Sahabah (ra), Tabi'een and Tab'e Tabi'een bear witness to this fact. The Mujtahidun Mutlaq differed in their methodology, which led to the birth of different schools of Fiqh.

Although the Mujtahideen were most convinced by the Ijtihad they performed, they nevertheless recognised the possibility that they could be wrong. Accordingly, the Mujtahideen have stated that whatever is correct in their work is from Allah (swt) and the errors are from themselves.

However, just because a Mujtahid is wrong, it does not mean that he should be barred from exercising Ijtihad. On the contrary, the Messenger of Allah (saw) said,

'Amr b. al-'Aas and Abu Hurayrah narrated that the Messenger (saw) said:

«إذا حكم الحاكم فاجتهد، ثم أصاب فله أجران، وإذا حكم فاجتهد ثم أخطأ فله أجر واحد »

"If a judge passes judgment and makes Ijtihad and he is right then he will have two rewards. And if he makes a mistake he will have one." (Bukhari & Muslim)

There is also a severe punishment for those who do Ijtihad without being qualified to do so, even if they are right. Allah (swt) says:

وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ إِنَّ السَّمْعَ وَالْبَصَرَ وَالْفُؤَادَ كُلُّ أُولَئِكَ كَانَ عَنْهُ مَسْئُولًا

".... pursue not that about which you have no knowledge; for surely the hearing, the sight, the heart, all of those will be called to account (on the Day of Judgment)" (TMQ al-Isra: 36)

One should not consider another opinion as being un-Islamic simply because it is different from the opinion that he has adopted. Instead, respect must be given to other opinion on the one condition that they are based on Islamic evidences. There is no need to respect opinions, which are not based upon a Daleel because there is no place in Islam for these opinions.

Therefore, it is necessary for every scholar to produce his Daleel in support of an opinion. This is to instil confidence in Muslims that his opinion is Islamic. Opinions given without evidence are baseless and should be rejected.

This view towards other Islamic opinions will ensure the correct Islamic attitude. However, this measure alone will not provide the total answer to the problems we face today, especially to the problems of unifying Muslims on certain key issues.

There will be many different opinions as to what the Hukm Shar'i is. In many instances this will not be a problem. However, one can imagine where it is necessary for the Ummah to be united under one opinion; e.g. sighting the moon for the beginning of Ramadhan, electing the Khaleefah, etc.

Ijma' as-Sahabah has established that the Khaleefah has the authority to adopt certain rules and to enact them. The Shar'i principles state:

(أمر الإمام يرفع الخلاف)

"The Imam's decree settles the disagreement"

(أمر الإمام نافذ ظاهرا وباطنا)

"The Imam's decree is executed openly and privately."

All Muslims including the Mujtahideen have to follow the opinion adopted by the Khaleefah, but they can maintain their opinion and teach it, while their obedience should be to the opinion that the Khaleefah adopts.

An example of this is the adoption of an opinion in the distribution of funds by Abu Bakr (ra) and Umar (ra). When Abu Bakr (ra) was

the Khaleefah, he paid equal grants to all of the Sahabah (ra). He (ra) did not distinguish between the early Muslims and the new Muslims. When the Islamic State started receiving larger funds through the liberation of various lands, Abu Bakr (ra) continues to distribute the wealth equally. Umar (ra) and some of the Sahabah (ra) insisted that the earliest Muslims should be given preference over the later converts. Abu Bakr (ra) told him that he was aware of the differences that Umar (ra) had mentioned; however, his opinion was that distributing the funds equally was better in the sight of Allah (swt) than the principle of preference. When Umar (ra) became Khaleefah, he replaced Abu Bakr's (ra) adoption of equality with his principle of preference. Umar (ra) did not like to pay the same amount to those who fought against the Prophet (saw) and those who fought with him. Accordingly, he gave a larger amount to the early Sahabah (ra) who fought in Badr and Uhud and the relatives of the Prophet (saw).

Thus, when Abu Bakr (ra) was the Khaleefah, Umar (ra) left his understanding and enacted the decree of Abu Bakr (ra), as did the judges, governors, and all Muslims. However, when Umar (ra) became the Khaleefah, he obliged the enactment of his opinion and the others implemented it.

Different opinions should not be viewed as a weakness or a source of disunity. As we have seen, Muslims have had varying opinions in many issues since the time of the Messenger of Allah (saw), as is mentioned in the Hadith of Banu Quraydhah. As long as the opinion is based on Islamic evidence, and this opinion does not contradict an assured law, it should be respected as an Islamic opinion.

Finally, the way to achieve Islamic unity is not by suppressing different opinions and calling for the abandonment of Madhahib. Rather, it is achieved by Muslims living under the ideological leadership of Islam where the Khilafah makes the decision of which opinion to adopt in key issues.

A Brief Overview of Some Schools of Thought

In order to conduct a comprehensive study in this issue, we need to first look at the status of Fiqh during the time of the Prophet (saw), the era of the Sahabah (ra), and the era of the generations that followed them, better known as the Tabi'een and the Tabi'-Tabi'een.

9.1 Era of the Prophet (Saw)

The Prophet (saw) received the revelation from Allah (swt) and delivered it to all the people. The Muslims who used to live close to him (saw) were the Sahabah (ra). When the Prophet (saw) migrated to Madinah they went along with him. The Muslims of Makkah were the Muhajireen and the Muslims of Madinah were the Ansar. He (saw) received the Message from Allah (swt) and was ordered to convey it. Allah (swt) says in the Qur'an:

يَا أَيُّهَا الرَّسُولُ بَلِّغْ مَا أُنْزِلَ إِلَيْكَ مِنْ رَبِّكَ وَإِنْ لَمْ تَفْعَلْ فَمَا بَلَّغْتَ رِسَالَتَهُ

"O Messenger, deliver the Message that was sent down to you from your Rabb, and if you did not do it, you did not convey His Message...." (TMQ Al-Ma'ida: 67)

وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ

"And we sent down to you the Zikr (the Qur'an), so that you would explain to mankind, that which was sent down to them" (TMQ An-Nahl: 44)

With these Ayahs in mind, there are certain points that need to be mentioned:

1. No one would give a Fatwa in the presence of the Prophet, since they knew that he (saw) was the authority.

2. Sometimes the Prophet would give the Sahabah (ra) an instruction, and the Sahabah (ra) would understand that instruction in two different ways. Moreover, the Prophet (saw) would approve both groups in following their understandings. An example of this has been mentioned earlier regarding the incident when the Prophet (saw) returned from the battle of Khandaq (ditch) and instructed the Sahabah not to pray Asr except in Bani Qurayzah.

From this we understand that both groups of the Sahabah (ra) discussed their different understandings of the same order of the Prophet (saw), and referred it back to him (saw). The Prophet (saw) approved both understandings. It is important to note that the differences did not occur due to an ambiguity in the order; rather it occurred due to the ability of Arabic language to convey various meanings and understandings.

3. During the lifetime of the Prophet (saw), if the Sahabah (ra) were travelling without the Prophet (saw), they used to conduct Ijtihad, and then refer back to the Prophet (saw) when they returned. For example: It was narrated on the authority of Jabir (ra): "a man was struck by a stone that fractured his skull. Then he had a wet dream. He asked his companions - do you know of a permit (Rukhsa) for me to perform Tayammum (dry ablution)? They said, 'we do not find any permit for you and you can use water.' He then had a bath and died. When hearing this the Prophet (saw) said:

« إنما كان يكفيه أن يتيمم ويعصب على رأسه خرقة فيمسح عليها ويغسل سائر جسده »

"Verily, it would have sufficed for him to make Tayammum, so tie a piece of cloth around his head and wipe over it and wash the rest of his body." And the Prophet (saw) said:

« ألا سألوا إذ لم يعلموا، إنما شفاء العي السؤال »

"Why did they not ask when they did not know. Indeed, the cure for inability and lack of knowledge is to ask." (Abu Dawud, Ibn Majah & Ahmad)

The preceding points illustrate that the Qur'an and the Sunnah were the only acceptable reference points for the Sahabah (ra), and that they would refer back to the Prophet (saw) in cases of uncertainty.

9.2 Era of the Sahabah (ra)

After the death of the Prophet (saw), the Muslims selected Abu Bakr (ra) as the Khaleefah. One of the first issues he faced was confusion on the part of Fatimah Umm Hasan (ra), daughter of the Prophet (saw), inheriting a piece of land, which the Prophet (saw) owned. Abu Bakr (ra) quoted the following Hadith, which resolved the matter.

« لَا نُورَثُ مَا تَرَكْنَا صَدَقَةٌ »

"We (Prophet's) do not leave things for inheritance. Whatever we leave is charity." (Bukhari & Muslim).

She then suggested to Abu Bakr (ra), letting her supervise the property and to distribute it the way the Prophet (saw) used to do. Abu Bakr (ra) refused saying,

« لَسْتُ تَارِكًا شَيْئًا كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَعْمَلُ بِهِ إِلَّا عَمِلْتُ بِهِ »

"I am not going to quit doing anything the Messenger (saw) used to do." (Bukhari)

In another narration, Abu Bakr (ra) said, "I am in charge after the Messenger (saw)."

Thus Abu Bakr (ra) pointed out to Fatimah Umm Hasan (ra) that if he (ra) gave her this authority then what is the point of having a

Khaleefah. Moreover, it was not up to her to act on behalf of the Khaleefah.

At that time Abu Bakr (ra) gathered the Sahabah (ra) and asked them, where are you? Why are you leaving me? (Abu Bakr (ra) was referring to the Sahabah (ra) leaving for the newly liberated lands). If you want me to be the Khaleefah you cannot just appoint me and depart. Thus, Abu Bakr (ra) maintained this group of Sahabah (ra) with him (ra).

During this era, with the death of the Prophet (saw), the Sahabah (ra) began performing Ijtihad for problems that arose which were not explicitly expressed in the Qur'an and Sunnah. The Sahabah (ra) compiled the Qur'an, and many of them had already committed the whole Qur'an to memory. The Ayah of the Qur'an was also written on stones, tree barks, or pieces of leather, and were scattered amongst the Sahabah (ra) in general.

Additionally, most of the Hadith were not documented; rather they had been committed to memory. No one single person had memorised the entire Sunnah as they had memorised the entire Qur'an. Nonetheless, the Qur'an the Sunnah together served as the reference point for the solutions to the problems that the Sahabah (ra) faced as a whole. After a while they found that not every single person was capable of understanding Islam, and so they began a program of educating those Muslims who were incapable.

At the time of the death of the Prophet (saw), the Sahabah (ra) numbered in the thousands, however only about seven to ten of them used to give Fatwa more than the others, and were considered practical Fuqahaa, or people who were able to give the Islamic rule in practical, day to day problems. Included in this group were Umar, Ali, Ibn Umar, Ibn Abbas, Ibn Mas'ood, Zayd bin Thabit, and Aisha bint Abu Bakr (ra). In their endeavour to determine the Hukm Shar'i rules for problems, the Sahabah (ra) adhered to the Qur'an and Sunnah; however, they still arrived at varying and different opinions.

For example, in the issue of divorce, Abu Bakr (ra) and Umar bin Al-Khattab (ra) had different opinions. Umar (ra) was of the opinion that if a man says to his wife "I have divorced you" three times in one sitting, then the man would have divorced her three times and could not remarry the woman until she married and was divorced by someone else. While Abu Bakr (ra) was of the opinion that this would result in only one divorce.

In another example, Abu Bakr (ra) used to distribute the spoils of war equally amongst the Sahabah (ra). When Umar (ra) became the Khaleefah, he did not give those who became Muslim recently and who had fought against the Prophet (saw) in the early wars, like Khalid bin Al-Walid (ra), as much as he gave to those who had accompanied the Prophet (saw) in those earlier wars.

The differences amongst the Sahabah (ra) were not only limited to the details of the Hukm Shar'i, they also had differences in certain branches of the 'Aqeedah.

However, these differences of opinions may exist in the branches of the 'Aqeedah, mainly due to linguistic structure of the Arabic language. Whereas, in the core of the 'Aqeedah there is only one correct understanding. For example, in an issue related to the 'Aqeedah there is a difference of opinion regarding Isra', Allah (swt) says;

سُبْحَانَ الَّذِي أَسْرَى بِعَبْدِهِ لَيْلًا مِنَ الْمَسْجِدِ الْحَرَامِ إِلَى الْمَسْجِدِ الْأَقْصَى

"Glory be to He who took his 'Abd on the Night Journey (Isra) from Masjid Al- Haram to Masjid Al-Aqsaa..." (TMQ al-Isra: 1)
Most of the Sahabah (ra) were of the opinion that the physical body of the Prophet (saw) made the night journey or the Isra. Aisha bint Abu Bakr (ra) was of the opinion that the physical body of the

Prophet (saw) did not make the journey and that only his (saw) soul made it. Aisha bint Abu Bakr's (ra) justification was that he (saw) was not missed and no one remembers his (saw) body leaving.

Another example is where Aisha bint Abu Bakr (ra) was told by a Sahabi (ra) that the deceased person would be punished because of the wailing and loud crying, performed by his family. Aisha bint Abu Bakr (ra) rejected this claim because she understood that it contradicted the Ayah that says:

وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى

"No-one will bear the burden of another..." (TMQ Al-Isra: 15)

Imam Baghawi in his book "The Lights of the Sunnah" remarked that Abu Bakr (ra) used to look to the Book of Allah (swt) to solve his problems. If he couldn't find a solution there, he would ask some of the Fuqahaa among the Sahabah (ra) for their Ijtihad in the particular issue. Imam Baghawi goes on to say that Umar (ra) used to consult the Sahabah (ra) even though he was himself a well-known Faqih.

Even though the Sahabah (ra) disagreed, their disagreement was well within the guideline of understanding the text and this was considered normal. Imam Muhammad Abu Zahrah, while discussing the era of the Sahabah (ra), said that it is important to remove two misconceptions.

A. The first is that some people said that the Sahabah (ra) used to disregard the authentic Hadith and based their judgments on their mind or own rational thinking. Imam Zahrah said that it should be understood that none of the Sahabah (ra) left the text for their own rational opinion; rather their opinions were based and influenced entirely by the texts. He uses an example from the Khaleefah Umar bin Al Khattab (ra), when he delayed cutting off the hand of the thief. Some people use this instance

as an example that Umar (ra) did this solely due to his own thinking.

This claim is incorrect, since there is a Hadith narrated by Ali (ra) where the Prophet (saw) said: "Don't implement the Hudood in the cases of doubt". There is also another Hadith narrated from Makhul (ra) in which the Prophet (saw) stated:

« لأ قطع فى مخمصه »

"There is no cutting in a famine". And Madinah was in fact experiencing a famine at the instance when Umar (ra) postponed implementing the Hadd.

B. Some tried to classify the Sahabah (ra) into two groups: Those who adhered strictly to the traditions (Ahlel-Hadith), and those who did not adhere to texts, called Ahlel-Ra'ee. They claim that the first group did this because they were Classical Traditionalists, while the second group was Revivalists.

This claim is incorrect, since both Ahlel-Hadith and Ahlel-Ra'ee adhered to the text. Imam Zahrah cited the example, which they use, regarding the stray animals in the State. The Prophet (saw) said to leave them and they will reach their owner. But Umar (ra) acted differently in this regard. He put them in one place and allowed the owner to identify them and take them.

It should be clear that Umar's action was in line with the Prophet's (saw), in that the objective was to allow the wandering animals to reach their owner. The Prophet's (saw) style or means in solving the problem was to allow the animals to wander.

However, during Umar's (ra) time, when the State had expanded to the areas of Sham and North Africa, the tactic of putting the animals in one location was used to solve the same problem of returning the stray animals to their owners, and there is no conflict. So what Umar (ra) did was part of his responsibility, which requires

adopting some administrative procedures. These administrative decisions can be changed.

It should be understood that there is a difference between an administrative order and a legislative order. Ordering a person to do his Salah if he made a mistake is a legal order, while tying up a wandering camel is an administrative order.

9.2.1 Why was there difference of opinion amongst the Sahabah (ra)?

The text sometimes could be understood in different ways due to the structure of the Ayah, and / or the structure of the Arabic language. For example, Allah (swt) says:

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ

"The divorced woman should wait for three periods (Quru)" (TMQ Al-Baqarah: 228)

The word Quru' in the Arabic language can mean the time when the woman begins her menstruation, or the post menstruation period. The difference between three cycles beginning with the purity period is about 7 to 15 days.

Sometimes a Sahabi would issue a Fatwa without having heard of a Hadith related to that issue, and which another Sahabi knew. However, these cases were usually resolved later.

How they viewed the texts and the methodology of interpretation. An example deals with the inheritance of the grandfather. Abu Bakr (ra) said that if one dies leaving a father, brothers, a wife and children, the presence of the father, who is considered the grandfather of the deceased person's children, would prevent other brothers from inheriting the wealth. Umar (ra) said that he would give the brothers and the grandfather the same amount after

discussing this issue with Zayd bin Thabit (ra) who was the foremost Sahabi in the area of inheritance.

9.3 Era of the Tabi'een

When Umar (ra) became the Khaleefah, if anyone from the Sahabah (ra) wanted to migrate to the newly liberated lands, he would have to take the permission of Umar (ra). Upon the request, Umar (ra) would grant a leave for a specified number of months on the condition that they would return.

When Uthman (ra) became the Khaleefah, he allowed the Sahabah (ra) to disperse. The Sahabah (ra) began leaving Madinah, heading out to regions such as North Africa, Sham, Kabul, and even Peking, while others went back to Makkah. For instance, Ibn Mas'ood (ra) went to Kufah, Abdur-Rahman bin Awf (ra) reached Peking, while Abdullah bin Umar (ra) stayed in Madinah. However, for the most part, the two main groups of Sahabah (ra) were either in Kufah or Madinah.

Those whom we call the Tabi'een were the followers and companions of a specific Sahabi. For example, Sa'eed ibnu Musayeb, Nafi', and Salem ibn Abdullah bin Umar are well known Tabi'een who followed Abdullah bin Umar (ra). Most of the Tabi'een were not Arabs so they learned the Arabic language, and in some cases they learned the language better than the Arabs themselves, and became major contributors to Fiqh.

9.3.1 Ahlel Hadith & Ahlul Ra'ee

During the days of the Tabi'een, two major methodologies of understanding the text arose:

a) Ahlel-Hadith (The People of Hadith) in Madinah.
b) Ahlel-Ra'ee (The People of Reason) in Kufah.
Those who followed Ahlel-Hadith (The People of Hadith) had more Hadith at their disposal and relied on the Hadith more than

on Qiyas, while Ahlel-Ra'ee (The People of Ra'ee) relied more on Qiyas and the meanings behind the text, but did not at all neglect the Hadith. Another difference between the two schools is that the Ra'ee (reasoning) in the School of Ra'ee was based on Qiyas while in Madinah Ra'ee was based more on an elaboration of the text itself.

9.3.2 Ahlel-Hadith (The People of Hadith)

Among the Tabi'een in Madinah were Sa'eed ibnu Musayeb, Zuhri, Yahya, and Rabiah-ar-Ra'ie, 'Urwa, Abu Bakr bin 'Ubaid bin Harith, Qasim bin Muhammad bin Abu Bakr, 'Ubaidullah, Sulayman bin Yassar, Khaija bin Zayd bin Thabit. They took their Fiqh from Abdullah bin Umar (ra). Sa'eed ibnu Musayeb was known as Al-Jareei (The Outspoken) or the on who has guts to make Ijtihad, while Rabiah was called Ar-Ra'ie because of his common practice of making Ijtihad.

The populace in Madinah had lived with the Prophet (saw) and took his (saw) actions and sayings in a more practical manner. Thus, Ahlel Hadith (People of the Book) emerged in Madinah.

There is also a misconception that Ahlel-Hadith (The People of Hadith) used to only adhere to the Hadith without performing Ijtihad whatsoever. This claim is false. For example, Imam Malik bin Anas, who emerged from the School of Madinah, used to do Ijtihad according to Maslahah Mursalah even more than Abu Hanifah, who emerged from the School of Kufah.

9.3.3 Ahlel-Ra'ee (The People of Reason)

Among the Tabi'een in Kufah were Ash-Sha'bee, Hasan al-Basri, and Ibraheem an-Nakha'ee, Hammaad, Alqamah bin Qais, Masjood bin Ajdah. These Tabi'een took their Fiqh from Ali bin Abi Talib (ra) and Abdullah bin Mas'ood (ra). Some of the Tabi'een such as Ash-Sha'bee was considered Muhaditheen (Scholars of Hadith).

The populace in Kufah (Iraq) was experiencing many problems such as the fabrication of Hadith, political turmoil, etc., and the scholars were very careful in collecting Hadith due to the possibility of fabrication. Due to these problems, they often used reasoning. Reasoning (Ra'ee) here implies opinion derived from different understandings of the text. Thus, they came to be known as Ahlel Ra'ee (People of the Reasoning).

The word Ra'ee linguistically means: opinion. Therefore some people think that the term Ahlel-Ra'ee (The People of Ra'ee) means the people who present their opinion. This is a misconception, to anyone who believes that their opinion was based on their desires. The opinion presented by Ahlel-Ra'ee was through their Ijtihad, which was based on the legislative evidences, i.e. Qur'an and Sunnah.

The Prophet (saw) said:

« إِنَّ اللَّهَ لَا يَقْبِضُ الْعِلْمَ انْتِزَاعًا يَنْتَزِعُهُ مِنْ الْعِبَادِ وَلَكِنْ يَقْبِضُ الْعِلْمَ بِقَبْضِ الْعُلَمَاءِ حَتَّى إِذَا لَمْ يُبْقِ عَالِمًا اتَّخَذَ النَّاسُ رُءُوسًا جُهَّالًا فَسُئِلُوا فَأَفْتَوْا بِغَيْرِ عِلْمٍ فَضَلُّوا وَأَضَلُّوا »

"Allah does not remove the 'Ilm after it was given to you, rather the 'Ilm would be removed with the death of the 'Ulema. Then some people, who are ignorant, will start giving their Ra'ee based on their desires and they are misled and will lead the Ummah astray." (Bukhari & Ahmad)

Awf b. Malik al-Ashja'i narrated that the Messenger of Allah (saw) said:

« ستفترق أمتي على بضع وسبعين فرقة ، أعظمها فرقة قوم يقيسون الأمور برأيهم »

"My Ummah will become divided into some seventy sects, the greatest will be the test of the people who make analogy to the deen with their own opinions, with it forbidding what Allah has permitted and permitting what Allah has forbidden."[39]

« من قَالَ فِي الْقُرْآنِ بِرَأْيِهِ فَلْيَتَبَوَّأْ مَقْعَدَهُ مِنْ النَّارِ »

The Prophet (saw) said: **"Whoever speaks about the Qur'an without knowledge, then let him prepare for himself his seat in the fire."** (Tirmizi, Ahmad, An-Nisai & Ibn Jarir)

These Ahadith are clearly referring to the person who adopts opinions or gives Fatwa based on his 'Aql without any evidence from the Shari'ah, Ahlel-Ra'ee on the other hand, were those who exerted their utmost effort in scanning the Islamic texts, and then issued an opinion. This process is called Ijtihad as discussed earlier.

Some people say that Ahlel-Ra'ee did not utilise Hadith in issuing their opinions. This claim is false. People like Ash-Sha'bee were recognised Muhaditheen while being from Kufah and from Ahlel-Ra'ee.

The main difference between them was that the People of Ra'ee practiced more Qiyas and Istihsan and they went deeper into the text to extract more rulings than the People of Hadith. These two main schools influenced many other schools of thought.

9.4 Madhab of Imam Abu Hanifah

Abu Hanifah al Nu'man ibn Thabit ibn Zuta (80-150 A.H. / 700-768 C.E.) was born during the Khilafah of Abdul Malik bin Marwan. Imam Abu Hanifah lived through 52 years of Umayyad rule and witnessed the Khilafah of ten Umayyad Khulafa including

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[39] Al-Tabarani in Al-Kabeer wal-Bazaar, Al-Haithami in Majma' Al-Zawaa'id, Part 1/the Book of Knowledge.

that of Umar bin Abdul Aziz who ruled when the Imam was 18 years of age.

He also saw 18 years of Abbasid rule, including that of Saffah and Mansoor. He realised that the Ummayyads had no claim on the Khilafah but he did not rebel against them since they were given the Bay'ah. He also did not speak out against the Abbassids; however, he started doing so when they started harassing the descendants of Ali (ra). Imam Abu Hanifah earned the title of Imam 'Aazam (the great Imam). Imam Shafi'i used to say, "The people in Fiqh are dependent upon Abu Hanifah".

He was born to a well-known Persian family in Kufah and spent most of his life there. His father was a good friend of Ali bin Abi Talib (ra). The two Sahabah (ra) who established the Kufah School were Ali bin Abi Talib (ra) and Abdullah bin Mas'ood (ra). They taught Tabi'een like Shurayh, Arqam bin Qais, Masjood bin al-Ajdah. They in turn taught Ibraheem An-Nakha'ee, Ash-Sha'bee. These two taught Hammaad Ar-Raawiyyah, who served as the teacher of Imam Abu Hanifah. Abu Hanifah studied with Hammaad for 18 years and took over his study circle (halaqah) after Hammaad's death in 120 A.H. Abu Hanifah also studied from Imam Jafar as-Sadiq.

Abu Hanifah's two most famous students were Muhammad bin al-Hasan al-Shaybani, and Qadi Abu Yusuf, who served as Chief Justice in the time of Haroon ar-Rashid and wrote the famous book called Al-Kharaj which detailed the Economic system in Islam. Each of Abu Hanifah's students developed into Mujtahids in their own right, with the ability of developing their own Usul al-Fiqh. However, they kept the Usul of Abu Hanifah and were considered Mujtahids of the Madhab of Abu Hanifah.

Abu Hanifah was a trader by profession, specialising in silk. In his early life he studied 'Ilm ul Kalaam, but abandoned it afterwards. Once he heard his son Hammaad, debating in 'Ilm ul Kalaam, he discouraged him from doing so. His son asked him why he was

prohibiting him when he himself used to debate in 'Ilm ul-Kalaam. Abu Hanifah replied that he used to debate in 'Ilm ul Kalaam while being afraid that others would be wrong in an issue. Whereas you are debating with the hope that your opponent would be wrong in an issue in order to exploit his mistake. He who wants his opponent to make a mistake in 'Ilm ul Kalaam means that he wants him to be a Kafir ('Ilm ul Kalaam deals with the issues of the 'Aqeedah), and he who wants his opponent to be a Kafir will become a Kafir before his opponent. So do not debate in 'Ilm ul Kalaam.

9.4.1 Students of Imam Abu Hanifa & Their Books

Abu Hanifah wrote many books, and his students also authored many important books on Islam. The books of Abu Hanifah include Fiqh ul-Akbar and Al 'Alim-wal-Muta'allim.

Some of the famous books of those who followed his Madhab include, but are not limited to the following:

- Al Kharaj (Fiqh on Islamic Economic System) by Qadi Abu Yusuf
- Al Mabsoot by As-Sarkhasee (Fiqh)
- Bada'ee as-Sana'ee by Al-Kasaanee (Fiqh)
- Fathul Qadeer by Kamal ibn Humam (Fiqh)
- Kitab-ul Usul-ul Fiqh by Al Bazdawee (Usul al-Fiqh)
- Kitab-ul-Aathar by Yusuf bin Abu Yusuf (Hadith)

9.5 Madhab of Imam Malik

Malik ibn Anas (93 AH- 179 AH) was born and passed away in Madinah. His ancestral place was Yemen. After the birth of Islam, his ancestors who had become Muslims migrated to and settled in Madinah. He received his education in Madinah, which was the highest place of learning in the vast Islamic State and housed most of the distinguished Sahabah (ra) of the Prophet (saw).

He studied under Abdur-Rahman ibn Hormuz, who advised Malik that: "The 'Alim (Scholar) should teach the people to say: "I do not know". Imam Malik followed and adhered to this advice throughout his life. Once a man attended his Halaqah and asked him a question to which Imam Malik replied: "I do not know, no-one else ever asked this question.... the scholars from before never discussed such a topic."

Then Imam Malik told the man to come back the following day and he would see if he would be able to supply the answer. When the man returned the following day, Imam Malik again told him that he had no answer. The man then told him that he had heard that Imam Malik was the most knowledgeable man in the world, and so if Imam Malik did not know, then who else would know. Imam Malik kept with his answer that he did not know.

Imam Malik also studied with Ibn Shihaab Az-Zuhri, Nafi' the ex-slave of Abdullah bin Umar, Yahya ibn Sa'eed; Rabiah ar-Ra'ee; and Jafar As-Sadiq. Imam Malik learned Ar-Ra'ee from Rabiah and from Yahya ibn Sa'eed, and he learned Hadith from Naafi' and from Ibn Shihaab Az-Zuhri. Therefore, we can say that Imam Malik had studied from both schools of Hadith and Ra'ee, since Ra'ee was also being taught in Al-Madinah.

Imam Malik was known for his very sharp memory and quick thinking. He used to think very hard and carefully to arrive at his opinions and never rushed to issue a Fatwa. Once someone asked him a question, and another person remarked that the question was very easy. Imam Malik replied that there is nothing easy or trivial with regard to giving a rule. Imam Malik also disliked lengthy arguments. He was once asked that if a person was very knowledgeable in the Hadith and Sunnah, should that person continue arguing his point. Imam Malik replied that such a person should just issue his opinion and his evidence without engaging in too much of a discussion or debate.

Imam Malik's classes were characterised by their serenity, discipline and high sense of respect, exhibited by the students for their learned teacher. Once, during his visit to Madinah, Haroon ar Rashid wanted to hear the Muwatta (collection of traditions by Imam Malik). Haroon sent for the Imam who advised him saying, "Rashid, tradition is a learning that used to be patronised by your ancestors. They had utmost regard for it. If you do not respect it as a Khaleefah, no one else will. Furthermore, people come to seek knowledge but knowledge doesn't seek people." Khaleefah Haroon ar Rashid agreed to listen to the Muwatta and his students.

Among the persons who benefited from Imam Malik's learning were Khulafa such as Mansoor, Hadi, Haroon, and Mamun. Scholars like Abu Hanifah, Shafi'i, and Abu Yusuf to name just a few, also benefited from the teachings of Imam Malik.

Imam Malik lived under the rule of the Ummayyads and the Abbassids. He did not entirely agree with their rule, nor did he join the rebels, but rather he advised that the people should not tolerate their wrong doings. He was not exempt from problems with the rulers, especially during the era of Abu Jafar al-Mansoor. Imam Malik had reported a Hadith in which the Prophet (saw) said:

« ليس على مستكره يمين »

"There is no oath if given under duress."

At that time some of the Shi'a, under the leadership of Muhammad Nafsul Zakiyyah were leading a revolt against the Khaleefah, using this Hadith as a basis for their revolt. Abu Jafar al-Mansoor sent a messenger to Imam Malik to ascertain if this Hadith had in fact been reported and supported by Imam Malik. Imam Malik told the Messenger that he had in fact reported that Riwayah, and so the Khaleefah understood from the reply that Imam Malik was a part of the Shi'a's rebellion. He was imprisoned and was beaten very severely to the point that his hands became deformed (Imam Malik

after this used to pray with his hands at his side). Afterwards, Abu Jafar tried to reconcile with Imam Malik. Imam Malik once said:

"When I returned to meet Abu Jafar during the Hajj season, he told me: 'I swear by Allah, I did not instruct anyone with what happened to you. The people of Al-Haramayn will remain in a good condition as long as you are with them. Allah lifted up this Ummah as long as you are with them. I ordered the Wali who was responsible to come to me and I have put him in jail, humiliated, insulted and punished him with more than what you were punished".

Imam Malik continued, "May Allah give you good health and a good destination on the day of Judgment. I have forgiven that Wali since he is a relative of the Prophet (saw)."

9.5.1 Books and Students from the Madhab Imam Malik

His book Al-Muwatta is one of the earliest collections of Ahadith. Imam Malik was one of the greatest scholars in the field of Hadith. He was also one of the few who wrote down the results of his Isnad (chain of reporters) in his collection of Hadith for the benefit of later generations.

He began writing it during the era of Al Mansoor and finished it during the era of Al Mahdi. Haroon Ar-Rashid wanted to adopt it as a legislative source of Islamic State's canons but Imam Malik refused, and was also against the idea of hanging a copy in the Ka'aba. The book of Al Mudawan Al Kubrah is also attributed to him.

Well-recognised Maliki scholars include:

- Abdur-Rahman ibn Qasim
- Abdul Wahab Ali al Baghdadi
- Ali ibn Hazm

- Qadi Iyad
- Abu Bakr Muhammad al Baqillani
- Ibn Rushd who wrote Bidayatul Mujtahid

9.6 Madhab of Imam Shafi'i

Muhammad ibn Idris ash-Shafi'i (150-205 AH / 767-820 C.E) is considered to be the architect of Usul al-Fiqh. He was born in Gaza (Palestine) and when he was two years old his mother took him to Makkah. Imam Shafi'i is from the tribe of Quraysh and his lineage meets with the Prophet (saw) at Abdu Manaf.

At an early age his mother took him to the local Kuttab to memorize the Qur'an, but since they were poor and could not afford the tuition, he was not allowed to attend the classes. He used to stay within an earshot of the class listening to the instructions of the Shaykh and memorising them. When the teacher would leave, young Shafi'i would go to help the students with their memorisation. The teacher learned about this and allowed young Shafi'i in the class with the condition that he would help the students with their memorisation.

When he was about seven years old he had memorised the Qur'an, and they went to Masjid Al-Haram where he studied the Arabic language. By the time he graduated, he had learned all the versions of the classical Arabic language. His statements are considered to be standards in the Arabic language. After completing his Arabic studies, a man advised him to study Hadith, Fiqh, and 'Ulum-ul-Quran, and so he moved to Madinah. There he studied under Imam Malik ibn Anas prior to his death in 179 A.H. It was directly from Imam Malik that Imam Shafi'i learned the Muwatta. He then travelled to Iraq, where he stayed as the guest of Muhammad bin Al-Hasan, the student of Abu Hanifah. Imam Shafi'i would debate and study with both Muhammad bin al-Hasan and Qadi Abu Yusuf. He then returned to Madinah, around 174 A.H., to visit with his old teacher Imam Malik. After the death of Imam Malik, Imam

Shafi'i travelled to Yemen. There he met Umar bin Abi Salamah, teacher of al Awaza'i, a great scholar in Usul al-Fiqh.

While there, some problems arose between the Khaleefah Haroon ar-Rashid and Ahl-ul- Bayt. Imam Shafi'i was accused of siding with the Ahl-ul-Bayt against the Khaleefah, and was arrested and taken to Baghdad to the court of the Khaleefah. After a discussion with the Khaleefah to clear himself of any wrong doing, Imam Shafi'i was invited by the Khaleefah to advise him. It is recorded that he was so firm and strong in his advice to the Khaleefah that the Khaleefah wept.

While in Baghdad he met Abdur Rahman bin al Mahdi (Scholar of Hadith) in 195 A.H., who asked him to write a book explaining the methodology of understanding Fiqh. In this work, Imam Shafi'i combined both the School of Hadith in Madinah and School of Ra'ee in Kufah. He was able to do this because he was aquainted with both schools. In Madinah he studied under Imam Malik and in Kufah he met Muhammad bin al-Hasan (follower of Hanafi school of Fiqh). The outcome of this book was called Ar-Risala (This old version does not exist today).

Imam Shafi'i then decided to move to Egypt. While in Egypt Imam Shafi'i rewrote his book Ar-Risala. In the new Risala, he established new principles in Usul al-Fiqh. Thus, his changing to a new methodology changed his Fatwas because the pattern for giving Fatwas is as follows:

Usul ul Fiqh	→	Fiqh	→	Fatwa

Some think that Imam Shafi'i changed his Fiqh due to the new circumstances or environment in Egypt. We must understand that Imam Shafi'i did not rewrite his book for the sake of it, or because he changed his location. There are really only two possibilities for the re-writing of Ar-Risala.

Imam Shafi'i had put in his mind that he wanted to reach a specific conclusion and in order to do so he would have to change the basis for those predetermined conclusions, or Imam Shafi'i found that the old basis he had used was wrong, and so it was necessary to redo or to revise his basis for deriving his Fiqh.

If there is a change in Usul al-Fiqh there will obviously be a different ruling and not vice-versa, because a Mujtahid is not allowed to think of a ruling before deciding on which sources to extract the rulings from. Therefore, as a result of changing the Usul al-Fiqh there were different Fatwas. The reason for the change was that he thought that his earlier Usul al-Fiqh was wrong. This change was not due to time or place. Therefore, his Madhab had changed completely because his Usul al-Fiqh had changed. This very important point, if it is not understood correctly could prove to be misleading.

Imam Shafi'i never debated in 'Ilm-ul-Kalaam. Regarding it he used to say; "Debating in Fiqh, at the very least would lead the people to make fun of you, for example, saying the Diyah for murder is an egg. Debating in 'Ilm ul Kalaam, they would say that you are deviating and making a Bid'ah. So go and debate in Fiqh, and leave 'Ilm ul Kalaam."

9.6.1 Books and Students from Imam Shafi'i 's Madhab

Imam Shafi'i's books include:

- Ar-Risalah
- Al-Umm
- Jimaa ul-Ilm
- Ibtaal ul-Istihsan
- Musnad Ash-Shafi'i'
- Ahkaam-ul-Qur'an

Those who are considered to be from his Madhab included:

- Jalaluddin as-Suyuti

- An-Nawawi
- Ibn Kathir
- Ibn Hajar al-Asqalani
- Al-Muzni
- Al-Ghazali
- Al-Khatib al-Baghdadi

9.7 Madhab of Imam Ahmad Ibn Hanbal

Imam Abu Abdullah Ahmad bin Hanbal (164 AH - 241 AH) was born and passed away in Baghdad. His mother and his uncle took care of him due to the death of his father when he was very young.

Baghdad at that time was experiencing a very strong intellectual movement, and was the capital of the Islamic State. It was residence for many scholars and intellectuals. It was in this environment that Imam Ahmad studied the Qur'an, Arabic language, Hadith, the sayings of the Sahabah (ra), and the Seerah of the Prophet (saw). At an early age it was quite evident that Imam Ahmad possessed a very sharp and keen intellectual ability.

He was known to be very serious in his youth. At about 15 years of age, in 179 AH, he began studying and taking care of the Science of Hadith, under the tutelage of Qadi Abu Yusuf. In 186 AH Imam Ahmad began travelling to Basra, Hijaz and Yemen. It is reported that he went to Hijaz at least five times. In 187 AH he met Imam Shafi'i in Makkah. In Yemen he took Hadith from Az-Zuhri and Ibn Musayeb.

A person once asked him about his busy travelling schedule and he replied; "I will keep my pen with me all the way to the grave." He met Imam Shafi'i again in Baghdad and studied in Imam Shafi'i's Halaqah. Imam Shafi'i said, "When I left Baghdad, I did not leave behind me a person more knowledgeable and better than Ahmad". Imam Ahmad came up at a very opportune time, in that he got a chance to read what was already documented by the great scholars

before him such as Al-Aathar by Yusuf bin Qadi Abu Yusuf, the works of Muhammad ibn Hasan, Imam Shafi'i and Imam Malik's Al-Muwatta. He was able to study Hadith, Sunnah and Fiqh all together. He collected 40,000 Ahadith in his famous book called Al Musnad. In this book he classified the Hadith based on the names of the Sahabah (ra) who reported them, as well as the Fiqh of the Sahabah (ra).

At the age of 40, he began his own Halaqah, although it was reported that before this he had already been issuing Fatwa. He used to give two Halaqahs, one was public and the other was for his students and his children. He used to instruct his students to write down the Hadith and did not encourage them to write down his Fatawa.

9.7.1 Imam Ahmad and 'Ilm-Ul-Kalaam

A man wrote a letter to Imam Ahmad asking him to debate with a person from the Muttakillimeen (one who practices 'Ilm ul Kalaam). Imam Ahmad replied that he already had the chance to meet with those from the Muttakillimeen but he chose not to sit down with those deviant people. Imam Ahmad's opinion was that the Book of Allah had to be taken the way it was revealed.

Because of such a position, he was usually at odds and in direct confrontation with people like Mu'tazilah, who at that time were supported by the Khaleefah Mamun. The Mu'tazilah used to say that the Qur'an was created and developed this opinion as a reaction to a position held by some of the Christians at that time.

A Christian during that time called Yuhannah Al-Damashqee used to instruct his followers that the best way to debate with the Muslims was to ask them about Allah's speech or word, and whether it was eternal or not. If they say it is eternal, then Jesus (Isa) would also have to be eternal since the Qur'an says Jesus is Kalimat-ul-Allah, or Allah's word. If they say that Allah's speech is not eternal, then this would mean that Allah's speech was created.

Being influenced by this, the Mu'tazilah began carrying the opinion that the Qur'an was created, thinking that this would cut off any avenue that could lead to the conclusion that Jesus was eternal. This opinion was adopted by the Khaleefah Al Mamun in the year 212 AH, and in 218 AH Al Mamun began imposing this opinion on the people, enacting a punishment on those who would not say that the Qur'an was created.

Imam Ahmad was one of the few people who stood fast in his opinion regardless of the punishment that he would face. He refused to say what the Khaleefah was trying to persuade him to say. When the people asked him why don't you just say the Qur'an was created and you will be free from the persecution? Imam Ahmad replied, "Then how will the Ummah know the truth?"

Imam Ahmad's opinion was that the entire issue was not one to be discussed since it was no more than a reaction to the Christians' debate, and that such an issue regarding the Islamic 'Aqeedah was never discussed by the Prophet (saw), nor any of the Sahabah (ra). While discussing this issue with another scholar who followed the Mu'tazilah opinion, Imam Ahmad said;

"You are saying something that the Prophet, Abu Bakr, Umar, Uthman and Ali never said. This could mean one of two things. Either you say they knew it and kept quiet, or that they did not know about it. If they knew and kept quiet then I will follow their opinions. If they did not know about it, then who are you to know something (regarding the Islamic 'Aqeedah) that the Prophet (saw) did not know?"

It should be clear here, regarding the opinion adopted by the Mu'tazilah that the issue is not whether they were right or wrong, rather the issue is with regard to using 'Ilm ul-Kalaam. Because of 'Ilm ul-Kalaam, Muslims began debating issues that were once debated by the ancient Greeks and as a result, they lost a clear understanding of many issues related to the Islamic 'Aqeedah. The

Islamic 'Aqeedah should be understood within the methodology of the Qur'an.

This methodology separates between two Daleel, i.e. the mind and the conclusive texts (Qur'an and Mutawatir Hadith). The mind is used to become convinced that the universe was created and is organised by Allah (swt); that Allah (swt) revealed the Qur'an; and that there is a need for a Messenger to convey this Message and that Prophet Muhammad (saw) is the Messenger to whom the Qur'an was revealed. Once we believe in these principles of the Islamic 'Aqeedah, then the role of the mind is to understand the conclusive texts as they were given with regard to the angels, Jinns, the Day of Judgment and the hereafter.

We should not discuss any issue dealing with the Ghayb or the un-sensed with our minds. The correct way is to believe in everything that the revelation brought to us the way it is, without trying to change it, adding to it, deleting from it or twisting its meaning. This means that issues such as the Jinns, angels, and the attributes of Allah (swt) cannot be discussed based on our minds or intellect.

We cannot even describe the attributes or anything related to the entity or essence of Allah (swt). Because of 'Ilm ul-Kalaam, Muslims started carrying certain deviant opinions and ideas regarding the Islamic 'Aqeedah, which resulted in one of the many factors which led to the decline of the Muslim Ummah. It should also be clear that none of the four Imams ever got entangled in 'Ilm ul-Kalaam'.

Imam Ahmad did not document his Fiqh as did Imam Shafi'i', and consequently his Fiqh was transmitted by his students. Imam Ahmad is said to have many opinions regarding an issue, and this caused some people to say that Ahmad was a Muhadith rather than a Faqih. It is important to note here that the varying opinions of Imam Ahmad were actually his quoting the varying opinions of the Sahabah (ra) without weighing one opinion against the other.

Besides being a great Faqih, he was a great scholar in the Sunnah. His title was Imam al Sunnah and the eliminator of Bid'ah.

9.7.2 Students from the Madhab of Imam Hanbal

Well-recognised Hanbali scholars:

- Ibn Qudama al-Maqdisi
- Al-Khiraqi
- Qadi Abu Ya'la,
- Ibn Taymiyyah
- Ibn al Qayyim

9.7.3 Ibn Taymiyyah

Ibn Taymiyyah (661 AH - 728 AH) was born in a family wherein both his father and grandfather were scholars of the Hanbali Madhab. Under the supervision of his father he memorised the Qur'an, studied Hadith, and learned Hanbali Fiqh. After the invasion of Baghdad, at the hands of the Tartars, he moved to Damascus where he became engaged in various activities aimed at waging Jihad against the invading Tartars.

He is characterised as the one who rejected Taqleed or imitation; he never followed the Sufi approach and used to call for Jihad; and he used to call for Hanbali Fiqh, which often put him in direct confrontation with those who utilised other Fiqh.

He disagreed with all four Imams on many issues and used to be confronted because of it; however, he never compromised his position. He also tolerated the other opinions as long as they were based on the Islamic texts, even though they conflicted with his own opinions.

In his book, Al Fatawa, he wrote that Ahl as-Salaf had many opinions, even in the areas of 'Aqeedah. Throughout his life Ibn Taymiyyah never tolerated injustice from any ruler and worked

tirelessly for the complete and comprehensive implementation of Islam in the Islamic State.

It's unfortunate that some Muslims who promote the ideas and understandings of Ibn Taymiyyah make excuses for unjust rulers and their tools, the paid scholars. They do all this while claiming that they are following the example of Ibn Taymiyyah. If one really wants to follow Ibn Taymiyyah then one must follow his comprehensive approach to Islam. Quoting one sentence or opinion of Ibn Taymiyyah and using it as a generalisation for his entire life actually does a disservice in the presentation of the life of such a great scholar of Islam.

9.8 Madhab of Ibn Hazm

Ibn Hazm (384 AH - 456 AH) was born in Cordoba in Andalusia (Spain), which at that time was the capital of science for all of Europe. He studied Qur'an, Hadith, and Maliki Fiqh. He then moved to study Shafi'i' Fiqh, and left it. Later on, he moved to study about the Madhab of Abu Dawud Az-Zahiri from Mas'ood bin Sulayman.

Ibn Hazm rejected Qiyas and took only the literal meaning of the text to the point that if a man urinated in a body of water; for example, he would consider for the water Najis (filthy); however, if the urine were from a pig, then the water would not be considered as najis. Ibn Hazm fought against Taqleed and called the people to discuss issues based on the Daleel. This caused him some problems from some people at that time. His most important book is Al-Muhalla.

9.9 Introduction to Madhab of Imam Zayd and Imam Jafar

The Messenger of Allah (saw) died without appointing a specific person to succeed him (saw) as a Khaleefah. After the Sahabah (ra) met and deliberated, they decided to select Abu Bakr (ra) as the Khaleefah. All the Sahabah (ra), including Ali (ra), gave the Bay'ah

to Abu Bakr (ra). Before he died, Abu Bakr (ra) nominated Umar bin Al-Khattab (ra) to be his successor, after consulting with the people of Madinah. Umar (ra) became the Khaleefah; however, only after being given the Bay'ah. On his deathbed, Umar (ra) nominated 6 people and suggested that the Khaleefah be chosen from among them.

Included in this list of nominees were Ali bin Abi Talib (ra) and Uthman bin al-Affan (ra). After Umar's death and his burial, the group which Umar had nominated gathered except for Talha who was in travel. It is reported that their meeting took place in Aisha's (ra) house, and Abdullah b. Umar was with them. They asked Abu Talha Al Ansari to shield them. Once they settled, Abdul-Rahman b. Awf said: "Who would take himself out of it (the Khilafah) and preside over the meeting on condition that he gives it to the best among you?" That is, who would renounce his right to the Khilafah, on condition that everyone makes him judge (arbitrator), to choose by himself a Khaleefah from amongst them as he deemed fit." Having said this, Abdul-Rahman b. Awf waited for an answer but no one answered him, so he went on saying: I myself renounce my right to the Khilafah. Upon this Uthman said: "I am the first to accept, for I heard the Messenger of Allah (saw) say:

« أمين فى الارض أمين فى السماء »

"A trustee on earth is a trustee in the heveans,"

Al-Zubayr and Sa'ad also said: "We agree". Ali kept silent; so Abdul-Rahman asked him: "What do you say O Abul Hassan!" Ali replied: "Give me an Oath that you would prefer the truth and not to follow the whims and not to favour any member of your family and not neglect the interest of the Ummah". Abdul-Rahman replied: "Give me (all of you) your Oaths that you would stand with me against whoever changes, and that you would accept whoever I choose for you (on your behalf) and I give you my Oath that By Allah, I shall not favour a relative nor shall I neglect the interest of the Ummah." He took an Oath from them and gave them an Oath

himself. Then he started to consult each one of them individually saying: "Apart from yourself, who do you think is worthy of this authority from among this group?" or words to that effect. Ali said: "Uthman." Uthman said: "Ali." Sa'ad said: "Uthman," so did Al-Zubayr. Then Abdul-Rahman sought the opinion of the prominent figures in Madina, and asked all the Muslims in Madina one by one, men and women. He left no one without asking him about whom, he or she, would like to be the Khaleefah from amongst that group. A group of them chose Uthman and another group chose Ali.

Once Abdul-Rahman completed his fact finding mission and consulted all the people, men and women, he summoned the Muslims to the mosque and went up the Minbar (podium) with his sword on and his "Amama" (head-dress) which the Messenger of Allah (saw) gave him: He stood for a long while then spoke:

"O people! I have asked you openly and secretly about your Imam, and I found that you cannot place anyone on the same level as these two men: Ali and Uthman". Then he turned to Ali and said to him. "Come to me O Ali!" Ali stood and walked to the Minbar until he came underneath it. Abdul-Rahman took his hand and said: Would you give me your Bay'ah according to the Book of Allah and the Sunnah of His Messenger and the (actions) of Abu Bakr and Umar?" Ali replied: By Allah no, but on my own exertion of that and my knowledge" - i.e. I would give you my Bay'ah according to the Book of Allah and the Sunnah of His Messenger according to my own exertion of that and my knowledge of them. As for the actions of Abu Bakr and Umar, I do not adhere myself to them but exert my own opinion." Abdul-Rahman then released his hand and called: "Come to me O Uthman!" He took his hand as he stood on the spot where Ali stood earlier and said to him: "Would you give me your Bay'ah according to the Book of Allah and the Sunnah of His Messenger as well as the actions of Abu Bakr and Umar?" Uthman replied, "By Allah yes. Upon this Abdul-Rahman looked up to the roof of the mosque with his hand clutching that of Uthman and said: "O Allah! Hear and witness; O Allah, I have put what was in my neck of that (matter) in the neck

of Uthman". Then people rushed to give their Bay'ah to Uthman until they overwhelmed him. Then Ali came pushing his way through to reach Uthman and gave him his Bay'ah. Thus Bay'ah was concluded to Uthman.

During Umar's (ra) Khilafah, he restricted the Sahabah (ra) from leaving Madinah, but in Uthman's (ra) Khilafah, the Sahabah (ra) were allowed to disperse from Madinah. There were some decisions made by Khaleefah Uthman (ra) that were debated by some of the Sahabah (ra). Some people from Egypt and other out-lying territories orchestrated by Abdullah bin Saba, advanced to Madinah in order to kill the Khaleefah Uthman (ra). Abdullah bin Saba was a Jew, who supposedly converted to Islam.

All of the Sahabah (ra), including Ali (ra), tried their best to negotiate with those people, but they were not inclined to listen to what was being presented by Ali (ra). The issue escalated and led to the assassination of Uthman (ra). Those who were guarding Uthman (ra) at the time of his assassination were extremely honourable people and included Ali's (ra) sons Hasan (ra) and Hussein (ra); however, the guards were eventually overwhelmed and Uthman (ra) was assassinated.

When Uthman b. Affan (ra) was killed by the rebels Madina remained without a Khaleefah for five days after him. Its Ameer during that time was Al-Ghafiqi b. Harb, one of the rebel's leaders. Those leaders requested Ali b. Abi Talib (ra) to take over the post of Khilafah. He used to avoid them, then the companions of the Messenger of Allah (saw) came to him and said: "This man - meaning Uthman - has been killed and people must have an Imam and nowadays we do not see anybody more worthy of the post than yourself, no one is of more precedence than you and no one is nearer than you to the Messenger of Allah". He said, "Do not put me forward for this post, for I would be a better assistant than an Ameer". So they said, "No, by Allah we should not do this until we give you our Bay'ah". He said, "Then this has to take place in the mosque, for I do not wish for my Bay'ah to be secret, nor to be

taken except with the consent of the Muslims". Abdullah b. Abbas later commented: "I was apprehensive about him coming to the mosque for I feared that some people would stir up trouble, but he insisted to go to the mosque. When he entered the mosque, the Muhajireen and the Ansar followed him in and gave him their Bay'ah. Then the people gave him also their Bay'ah as well as the majority of the Muslims despite the absence of Banu Umayyah and some of the Sahabah."

During the era of Ali (ra), he had differences with some of the Sahabah (ra). Actually Ali (ra) found himself facing a variety of critical issues, such as his (ra) opinion that the organised conspiracy, which led to Uthman's (ra) assassination, was an organised internal disruption rather than a one-man effort. There were differences with Sahabah (ra) such as Talha, Zubair, and Aisha bint Abu Bakr (ra); Mu'awiyyah (ra) and his persistence in having Uthman's (ra) killers handed over to him; some of Ali's (ra) so-called "supporters" began evoking claims that Ali (ra) was God incarnate.

From his side, Ali (ra) chose to handle all of these crises at once; he killed those who claimed that he was god; moved to Kufah to deal with Talha, Zubair and Aisha bint Abu Bakr (ra) issue; and was able to overcome this although it led to the killing of Talha and Zubair (ra); and then he (ra) moved towards Syria to deal with Mu'awiyyah (ra). All of these activities caused Ali (ra) to be continuously engaged in one conflict or another. Finally the conflict ended in his (ra) assassination.

It is within this environment that the seeds of the Shi'a were sown and started growing. In the beginning it started as a political movement working under the pretext of getting the Khilafah back to Ali (ra) and his descendants. Later on, it was given an intellectual context. The Shi'a were divided into many groups. Some went to the extreme claiming that Ali (ra) was god. Others claimed that the Messengership was meant for Ali (ra) and not for Muhammad (saw). These two groups were not considered Muslims. Even the Shi'a label these groups as non-Muslims. In addition to this, there

were others like the Zaydis and the Jafaris who did not at all go to these extremes.

Some people presently generalise and label all of the Shi'a as Non-Muslims. This generalisation is not at all correct, since not all of the Shi'a believe that Ali (ra) deserved the Messengership or that Ali (ra) was god incarnate, or that the Qur'an was changed and is imperfect. The Zaydis and the Jafaris cannot be labelled as non-Muslims since they do not subscribe to such Kufr beliefs. However, if an individual carries such beliefs or ideas then that individual deserves the label as being non-Muslim, whether he is Shi'a or Sunni. Anyone who carries Kufr ideas and concepts even if he was born to Sunni parents will not be considered as Muslims.

9.9.1 Madhab of Imam Zayd

Imam Zayd bin Ali (80 AH - 122 AH) was born in Madinah. His father Ali, son of Al-Hussein bin Ali bin Abi Talib the fourth Khaleefah, was one of the few descendants of Hussein that were spared at Karbalah. Imam Zayd's father was highly respected and highly educated, and rejected the extremism of those who claimed themselves to be Shi'a.

It was in this environment that Imam Zayd was born. His father died when he was 14 years old and his elder brother Muhammad al-Baaqir took care of him. His early education was taken from his elder brother Muhammad al-Baaqir, who was considered at that time as a great scholar. He also studied with another great scholar, Abdullah bin Hasan bin Ali. Both Al Baaqir and Abdullah bin Hasan were teachers of many great scholars and Imams like Abu Hanifah and Imam Malik, who took Hadith from them. Zayd also studied under other Tabi'een who were residing in Madinah.

Later on Imam Zayd moved to Basra where he met Waasil bin 'Ataa, the founder of the Mu'tazilah. He kept moving between Iraq and Hijaz seeking knowledge. Abu Hanifah once said about Imam Zayd, "I met with Zayd and I never saw in his generation a person

more knowledgeable, as quick a thinker, or more eloquent than him. He was in a class by himself."

Imam Zayd had differences with Khaleefah Abdul Malik, and even rebelled against him. He went to Kufah where Shi'a of Iraq joined him. 15,000 people gave him the Bay'ah in a Masjid, but only about 400 of them stood with him when he faced the army of the Khaleefah. Imam Zayd felt that a military confrontation was the best way to deal with Khaleefah, and felt let down after his so-called supporters abandoned him in the same way that his supporters abandoned his grandfather Hussein.

Even though both Imam Hussein and Imam Zayd utilised military confrontation to correct the situation in the Islamic State at that time, it seems that what was needed to be established was a group that would work in the Ummah to educate it and serve as a safeguard for the Ummah, instead of rebelling against the Khaleefah without this preparation, which did not at all solve the problem but rather made matters more complicated. The stand by Imam Zayd and his few supporters against the army of the Khaleefah ended with his death. He was heard saying: "I am worried that I will be let down just like my grandfather Al Hussein was let down," and in fact this was true.

Although he viewed Ali (ra) as deserving of the Khilafah, he also recognised the Khilafah of Abu Bakr, Umar, and Uthman (ra). He also believed that the Khulafa did not have to be predetermined by the texts, but that it was enough to be from Banu Hashim, and that the Khaleefah was not infallible. He did not document his Madhab, rather it was done afterwards.

His Fiqh was documented in Al Majmu', which was documented by his student Abu Khalid Amr ibn Khalid Waasifi. The Grand Majmu' or Al-Majmu' Al-Akbar is made up of two sections, Majmu' Al-Hadith and Majmu' Al-Fiqh.

After Imam Zayd's death, many students from his Madhab emerged, especially in Yemen. The most interesting thing about this Madhab is that they never closed the door of Ijtihad. This Madhab is very close to that of Abu Hanifah's in the areas of Mu'amalat or transactions. Nowadays this Madhab is said to be the closest to the four popular Madhabs of Abu Hanifah, Malik, Shafi'i and Hanbal. Imam Abu Zahrah, in his book History of the Islamic Schools of Thought (Taareekhul Madhabil Islamiyyah), said that there are two Zaydi Madhabs, the one before his death and the one that emerged after his death.

After the problems, which occurred with the Khaleefah Al Mansoor, the Zaydi Madhab became weak and other Shi'a Imams started to influence it. Some of these Imams did not approve of the Khilafah of Abu Bakr (ra) and Umar (ra) and so there is an appearance that this was an inherent part of the Madhab. However, presently the Zaydis have gone back to Imam Zayd's adoptions. Two of these scholars who followed the early Madhab of Imam Zayd are Imam Shawkani and Imam Muhammad bin Isma'eel As-Sana'anee.

9.9.1.1 Imam Shawkani

One of the most famous scholars of the Madhab of Imam Zayd is Imam Shawkani. Imam Shawkani died in 1250 AH in Yemen. His writings show that he was against Taqleed. They also show that he treated all Madhabs equally, including the Zaydis, and in the issues of the 'Aqeedah he did not go against that of the Salaf at all. Imam Shawkani's books include Nayl al Awtaar in Hadith, Irshad ul-Fuhool in Usul and Fathul-Qadeer in Tafseer.

9.9.1.2 Imam Muhammed Bin Isma'eel As-Sana'anee

Imam Muhammad bin Isma'eel as-Sana'anee (1059 AH - 1182 AH) was born in Yemen and moved to Makkah, where he developed to be an extremely capable Mujtahid. He rejected Taqleed, and was severely challenged by those who refused the concept of Ijtihad;

however, he held his ground and never paid attention to his objectors. One of his many books is Subul-us-Salaam, in Hadith.

Both Subul-us-Salaam and Nayl Awtaar are considered presently to be extremely essential for their contributions in the area of Fiqh and Hadith.

9.9.2 Madhab of Imam Jafar

Though the Shi'a Imamia is also called Jafariah, this does not mean that the sole source of the Shi'a Fiqh is Imam Jafar. It is mixed with others. The Jafariah Madhab is composed of Fiqh from other people such as Qumi, Tousi and Qulani. Thus, it is very hard to verify what was reported by Imam Jafar. Among the Jafariah claims are:

A. The Imams were appointed by the Prophet (saw), namely Ali (ra) and his descendants. The twelve Imams are as follows:
   1. Ali (ra)
   2. Hasan ibn Ali (ra)
   3. Hussein ibn Ali (ra)
   4. Ali Zain-ul-aabideen
   5. Muhammed al-Baaqir
   6. Ja'far as-Saadiq
   7. Musa al-Kazim
   8. Ali al-Rida
   9. Muhammad al-Jawad
   10. Ali al-Hadi
   11. Al Hasan al-Askaree
   12. Muhammad bin al-Hasan

B. The Imams are infallible i.e. they cannot commit any sins.

C. Imams have qualities, which elevate them above the level of Prophets. In the words of Ayatollah Khomeini: "The Imam has an exalted position, an elevated rank and a creational viceregency (caliphate) to whose sovereignty and dominion all of

the atoms of the universe yield and obey and, among the basic tenets of our Madhab is that the Imams have a position which cannot be attained by either an angel close or a commissioned Prophet. Furthermore, based on the narrations and Hadith which we have, the greatest Prophet and the Imams existed before this world as lights which Allah made to encircle His throne."[40]

D. Tuqiyyah is allowed. Tuqiyyah states that a Muslim is allowed to hide whatever he believes in due to certain circumstances. The Jafaris claim that Imam Jafar said: "It (Tuqiyyah) is my Deen and the Deen of my forefathers" about Tuqiyyah.

E. Some of the Jafaris claim that the 12th Imam was born and was hidden in his early childhood. However, Al-Kulaynee, in his book Al Kafee, reports that the 12th Imam's father died before his birth. The pregnant period passed and the expecting mother realised that she was actually not pregnant, and so the 12th Imam was never born.

These are but a few of the opinions of those who claim to follow the Madhab of Imam Jafar. Let us now study his life to determine if such claims were actually from Imam Jafar.

Imam Jafar as Sadiq bin Muhammad al Baqr (80 AH to 148 AH) was born in Madinah and is the nephew of Imam Zayd and grandson of Zain Al-Aabideen. The Shi'a considers Imam Jafar as the sixth Imam. His father Muhammad Al-Baaqir used to be approached by people like Sufyan Ath-Thawri, Sufyan bin Ayaynah and Abu Hanifah in their quest for knowledge. Al Baaqir highly respected Abu Bakr, Umar, and Uthman (ra), and he used to say: "He who does not recognise Abu Bakr and Umar is ignorant in the Sunnah."

[40] Khomeini, Al-Hukoomah al-Islamiyyah p. 52

In another occasion he told his student Jabir Al Ja'fee: "O Jabir, I know that some people in Iraq claim that they like us, but they try to undermine Abu Bakr (ra) and Umar (ra) claiming that I instructed them to do so. Tell them that indeed, I denounce them for the sake of Allah, and if I were in charge, by Him in whose hands is the soul of Muhammad, I would slaughter them and shed their blood in order to get closer to Allah. May the intercession of Muhammad not cover me if I do not ask Allah to forgive both Abu Bakr and Umar and give them both His mercy. Allah's enemies are absent minded and neglectful of them."

Muhammad Al-Baaqir used to do Tafseer of the Qur'an, report Hadith whether the reports came through Ahl-ul-Bayt or from the other Sahabah (ra) without distinction. He was actually married to the granddaughter of Abu Bakr As-Siddiq, and Imam Jafar was born from this marriage. This means that his mother's line ended with Abu Bakr (ra) while his father's ended with Ali bin Abi Talib (ra).

Imam Jafar grew up in Madinah where the Sahabah (ra), their traditions and works remained and where the Tabi'een used to live. He used to stay close to his grandfather Zain ul-Aabideen, where the Tabi'een would come to discuss issues of Islam with Zain. Therefore, Imam Jafar would take from both the Tabi'een and from Ahl ul-Bayt. His mother was also the daughter of Qasim bin Muhammad bin Abu Bakr, one of the seven great Tabi'een, whom people like Imam Malik used to study with. This shows that Imam Jafar had a wide and comprehensive understanding of Islam.

After the death of his father, he continued seeking knowledge. He used to study in depth, the opinions of different scholars, and after a long debate with Abu Hanifah, Abu Hanifah declared: "The most knowledgeable person is the one who is the most knowledgeable of their differences," referring to Imam Jafar. Many scholars such as Imam Malik and Abu Hanifah used to sit and take reports from him.

9.9.3 Imam Jafar and Public Life

Jafar witnessed at an early age, his uncle's move against the Umayyad Khaleefah. He realised how his followers had let him down. Therefore, he was able to develop a complete image about the people who were calling themselves the Shi'a. Later on, in the Abbasid Khilafah, since they were also from Bani Hashim, it was expected that the situation would change for the better with Ahl ul-Bayt.

However, when some of Ahl ul-Bayt rebelled against the Abbasids, another massacre occurred and Imam Jafar witnessed another era of persecution. So we find him trying to keep away from the political life as much as possible, and he never claimed the Bay'ah for himself. However, this does not mean that he did not have nor develop political opinions. In his era, the extremist opinions of Shi'a appeared. Such ideas included that the Sahabah (ra) being Kuffar, the slandering of Abu Bakr and Umar (ra), and claims that such ideas were from Jafar and Imam Al Baaqir. Also in his era, the Khattabiyyah, another deviant group, emerged.

A Persian named Abul Khattab, who claimed Prophethood, developed the Khattabiyyah movement. Imam Jafar took the responsibility of clearing the mess being purported by the Khattabiyyah, which caused him to suffer a lot in this cause. For example, it was reported that the Khaleefah Al Mansoor summoned Imam Jafar to him, based on reports that Imam Jafar was collecting Zakah on his own. He later found that this claim was false and was probably spread by the enemies of Imam Jafar.

9.9.4 Fiqh of Imam Jafar

Beside his struggle to clean up the mess of the deviant people, Imam Jafar also made great contributions to Fiqh and Hadith. The Fiqh of Imam Jafar is considered to be one of the Fiqh from the Sunnah. However, there are some people who claim themselves to be Jafaris try to present a different picture of Imam Jafar.

Al Kulaynee, in his book Al Kafee, claims that Imam Jafar has a special 'Ilm which was carried from the well of the Prophet (saw) to Ali (ra), and then to other Imams, arriving to Imam Jafar, who then transferred it to the remaining Jafari Imams. This special knowledge Al Kulaynee called Al Jafr. This Jafr gives to the Imam who carries or has it, knowledge of the Ghayb or the unsensed, and it seems as if this claim actually came from Al Khattabiyyah.

Such claims are not at all expected or suspected to be from the honourable and trustworthy Imam Jafar, especially when we realise that the reporter, Al Kulaynee, purports claims that the Qur'an was tampered with. It is clear that these heretic claims attributed to Imam Jafar and Imam Zayd are false, and that these honourable and trustworthy Imams would not have said such things.

Finally, the Muslim Ummah has witnessed turmoil throughout its history. We now have to come to realise that blaming each other for the division of the Ummah is not the answer to our current problems. The Muslim Ummah has to agree on the issues of Islam that are undebatable and it has to realise that there are issues where it is natural for differences to arise, and so room has to be given for those differences.

The Ummah has to agree that there is no God but Allah (swt) and that Muhammad (saw) is His last and final Messenger; that no revelation was delivered to anyone else after him; that he did not hide any aspect of the Message nor did he give parts of it to special elites.

The Muslim Ummah must realise that it must be ruled by Islam, and that the Islamic State should adhere to the texts of Islam, i.e. Qur'an and Sunnah, and that it must deal with everyone from Islamic point of view, regardless of race, colour, sex, sect, or religion.

The Islamic State and the Khaleefah is not a theocracy, the Khaleefah is not God's representative on earth and is not infallible. As infallibility is a prerequisite for Prophethood, it cannot be imagined that the Prophet (saw) could make a mistake in delivering the Message. The Khaleefah does not need a prerequisite of infallibility since his role is to only implement Islam, which was already completed and sealed with the death of the Prophet (saw), without any room for deletion or addition.

The Messenger of Allah (saw) has informed us that the Imam (Khaleefah) may make a mistake and he informed that the Imam may do things which people hate and curse him for, like oppression, disobedience and other things. He informed us that open Kufr may appear from the Imam.

It is reported on the authority of Abu Hurayra that the Messenger of Allah (saw) said:

« إِنَّمَا الْإِمَامُ جُنَّةٌ يُقَاتَلُ مِنْ وَرَائِهِ وَيُتَّقَى بِهِ فَإِنْ أَمَرَ بِتَقْوَى اللَّهِ عَزَّ وَجَلَّ وَعَدَلَ كَانَ لَهُ بِذَلِكَ أَجْرٌ وَإِنْ يَأْمُرْ بِغَيْرِهِ كَانَ عَلَيْهِ مِنْهُ »

"Verily the Imam is but a shield from behind which the people fight and by which they protect themselves. So if he ordered to observe the Taqwa of Allah and he was just he would have equal to these (actions) in reward, and if ordered other than that it would be against him equal to that." (Muslim)

This means that it is possible that the Imam may command with other than the fear of Allah. It is also narrated from 'Abdullah who said: The Messenger of Allah (saw) said:

« سَتَكُونُ بَعْدِي أَثَرَةٌ وَأُمُورٌ تُنْكِرُونَهَا »

"There would be after me selfishness and matters which you hate.' They said: 'O Messenger of Allah, how do you order the one of us who would witness that?' He (saw) said

« قَالَ تُؤَدُّونَ الْحَقَّ الَّذِي عَلَيْكُمْ وَتَسْأَلُونَ اللَّهَ الَّذِي لَكُمْ »

'You should offer the right due upon you, and you ask Allah the thing which is due to you." (Muslim)

It is narrated from 'Auf b. Maalik that the Messenger of Allah (saw) said:

« خِيَارُ أَئِمَّتِكُمْ الَّذِينَ تُحِبُّونَهُمْ وَيُحِبُّونَكُمْ وَيُصَلُّونَ عَلَيْكُمْ وَتُصَلُّونَ عَلَيْهِمْ وَشِرَارُ أَئِمَّتِكُمْ الَّذِينَ تُبْغِضُونَهُمْ وَيُبْغِضُونَكُمْ وَتَلْعَنُونَهُمْ وَيَلْعَنُونَكُمْ قِيلَ يَا رَسُولَ اللَّهِ أَفَلَا نُنَابِذُهُمْ بِالسَّيْفِ فَقَالَ لَا مَا أَقَامُوا فِيكُمْ الصَّلَاةَ وَإِذَا رَأَيْتُمْ مِنْ وُلَاتِكُمْ شَيْئًا تَكْرَهُونَهُ فَاكْرَهُوا عَمَلَهُ وَلَا تَنْزِعُوا يَدًا مِنْ طَاعَةٍ »

"The best of your Imams are those whom you love and they love you and who pray for you and you pray for them, and the worst of your Imams are those whom you hate and they hate you and you curse them and they curse you.' We asked: 'O Messenger of Allah, shall we not then declare war on them?' He said: **'No, as long as they establish prayer among you. And if you see something which you hate in your rulers then hate the action and do not withdraw your allegiance of obedience."** (Muslim)

It is narrated on the authority of Junada b. abi Umayyah who said: "We went to 'Ubadah b. as-Samit when he was sick and we said: May Allah (swt) guide you. Inform us of a Hadith from the Messenger of Allah (saw) so Allah may benefit you from it.

« قَالَ دَعَانَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَبَايَعْنَاهُ فَكَانَ فِيمَا أَخَذَ عَلَيْنَا أَنْ بَايَعَنَا عَلَى السَّمْعِ وَالطَّاعَةِ فِي مَنْشَطِنَا وَمَكْرَهِنَا وَعُسْرِنَا وَيُسْرِنَا وَأَثَرَةٍ عَلَيْنَا وَأَنْ لَا نُنَازِعَ الْأَمْرَ أَهْلَهُ قَالَ إِلَّا أَنْ تَرَوْا كُفْرًا بَوَاحًا عِنْدَكُمْ مِنْ اللَّهِ فِيهِ بُرْهَانٌ»

"He said, the Messenger of Allah (saw) called upon us and we gave him the Bay'ah, and he said of that which he had taken from us, that we should give him the pledge to listen and obey, in what we like and dislike, in our hardship and ease, and that we should not dispute the authority of its people

unless we saw open Kufr upon which we had a proof from Allah." (Bukhari)

These Ahadith clearly make the point that it is possible for the Imam to make a mistake, forget or disobey. Despite this, the Messenger of Allah (saw) has ordered the obedience to him as long as he governed by Islam and no open Kufr occurred from him and he did not command with sin. So, is there anything to be said after the news of the Messenger of Allah (saw) about the Khulafa'a that there would be from them things which Muslims deny despite the fact that he commanded Muslims to obey them? Is it possible after this to say that the Khaleefah has to be infallible and he has not to be like other human beings? It is clear that the Khilafah State is a human state and not a theocratic state.

Do We Need a New School or Madhab?

Some claim that it is mandatory to adhere to one Imam or one school of Fiqh. This is completely wrong since we are ordered to follow Islam and not to one specific human being. And the person who meets the requirements of Ijtihad does not have to adhere to one specific school of thought. Even if someone is not a Mujtahid, he does not have to follow one specific school. Rather, each individual is ordered to follow the Shari'ah, which is extracted or deduced by Mujtahids. Consequently, the adherence is to the Shari'ah and not the Imam or the Mujtahid. This point was emphasised by each of the scholars and Imams.

On the other hand, the claim that we need a new school of Fiqh due to the current situation of the Muslim Ummah is unfounded. Since what is really needed is the application of Islam in a comprehensive way, and not just to develop another school among the other already existing schools of Fiqh. There are however, two factors that must be kept in mind.

1) New problems emerging daily, in every era and every generation, and that

2) The Ummah is ordered to follow the divine rule to solve any problem.

These two factors require therefore, that every generation of the Muslim Ummah must have at least one Mujtahid amongst them in order to address the newly arising problems. In order to deduce the Hukm Shar'i, this Mujtahid does not have to discuss old problems since they are already addressed. Therefore, in this regard, the need is for Mujtahids to meet the requirements of Ijtihad, in order to address new problems and not necessarily form a new school of thought.

However, the presence of vast numbers of Mujtahids among the Ummah to find solutions to the newly arising problems was greatly

reduced when the doors of Ijtihad were closed. This tragic event took place after the sacking of Baghdad in the Seventh Century Hijri. This led to a problem in the Ummah because closing the door of Ijtihad resulted in very few people who could perform Ijtihad. Thus the newly arising problems were not being solved through the Shari'ah.

The closing of the doors of Ijtihad resulted in the development of various philosophies concerning the status of the Ummah in its adherence to Islam.

These philosophies can be summarised as follows:

- Some people started issuing opinions concerning the new problems, from their own minds, without any Daleel or specific methodology of conducting Ijtihad.

- Others prematurely jumped to answers without acquiring the necessary prerequisites for Ijtihad, claiming that Ijtihad should not be closed and that the current situation provided everyone with the chance to perform Ijtihad.

- Others began undermining Ijtihad, claiming that every issue is debatable and therefore it is up to the individual to pick and choose whatever is most convenient.

All of these claims mentioned above are invalid because they caused Muslims to start taking their desires, wishes, intellect, or someone else's intellect as a reference, while we are ordered to take Islam as the one and only reference.

The doors of Ijtihad should not have been closed because without Ijtihad new problems would not be addressed by the Hukm Shar'i. Yet, at the same time the doors of Ijtihad should not be flung open without any restrictions, controls or requirements. There are

actually many requirements to be met in order to meet the qualifications of a Mujtahid, including sincerity and justice.

Others began taking advantage of the existence of the many schools of thought by shopping around for the most convenient opinion and compiling strange verdicts of each Mujtahid. These people went to each Madhab separating the lawful opinions from the unlawful things of the Madhab. They took the lawful verdicts, leaving the unlawful, until ending up with a new Madhab where everything is lawful and nothing is unlawful. This action is a major deviation from Islam.

Imam Al-Baihaqi reported: "Isma'eel Al Qadi said: 'One day I entered to Al Mu'tadid, one of the Abbasid Khaleefahs, and immediately he showed me a book to read. I found that the author had compiled in it, the strange sayings of every 'Alim. So I told the Khaleefah that the author of this book is a heretic. The Khaleefah asked why this was so, and I told him that those sayings were not presented by the scholars as they are presented in this book. He who legalised the Mu'tah marriage did not legalise singing, while he who legalised one action would not legalise another action. Additionally, each 'Alim has strange opinions, so if one would compile the pitfalls of all the Imams, and adopt them, then the Deen would be lost. The Khaleefah then ordered the book to be burned."

Imam Al-Awza'i said: "He who traces the strange opinions of the scholars is out of Islam. You would find a scholar with a lot of knowledge and value, and also with a pitfall. So if a person was to collect the pitfalls of all the scholars and form a new Madhab, then what kind of 'Ilm would you have?'"[41]

Others claim that having different Madhahib is wrong and that we need to reunify all of the Madhabs and come under one single Madhab, completely free from sectarianism and firmly based on

[41] Who has the right to make Ijtihad, Salman Al Udeh, p. 13

sound scholarship. This, they claim, would be the prerequisite toward reunification of the Ummah and then after this, would we look toward establishing the Khilafah.

The presence of the many Madhahib was not in itself an objective. The objective is to understand the rules in order to execute them. The understanding of the text leads to different opinions, which leads to different Madhabs. Due to reasons listed in section.

10.1 Reason for Differences of Opinion among the Mujtahideen

There exist legitimate differences amongst Mujtahideen. Trying to eliminate the possibilities of having more than one understanding goes against the nature of Islam, and the nature of human beings, which Allah (swt) created.

Those calling for this single Madhab are in fact adding a new Madhab to the already existing ones. This is due to the fact that a person might disagree with this new Madhab, for valid reasons, and would finally adhere to his understanding. It should be understood that sovereignty belongs to the Islamic legislative sources, which came from the Wahy (revelation). If everyone keeps this idea in mind and is ready to abandon his own opinion in order to adopt an opinion based on the Daleel, the problems would be eliminated.

If we study the numerous examples during the era of the Sahabah (ra) we can find that in the days of Abu Bakr (ra), there were differences among the Sahabah (ra). However, none of them postponed working for the Khilafah until all opinions were melted into one single opinion. Actually they realised that, what was needed more than anything else, even more than the immediate burial of the Prophet (saw), was to elect a Khaleefah who would take care of their affairs by implementing all of Islam. Thus establishing an environment in which the society would be able to cope with any issue that it is faced with.

Similarly, what is needed presently is this same authority, which establishes and implements Islam. However, as long as the Ummah is preoccupied with calls such as working to unite under one new Madhab, which is a call to keep and prolong the rule of Taghoot (evil), the Ummah will continue to be disunited, misdirected, with its problems continuously multiplying. With no mechanism to solve its problem, the Ummah will continue to be manipulated by those who rule over it with the rules of Kufr.

Taqleed

Taqleed linguistically means to follow others without thinking. As a juristic term it means to follow a Mujtahid's Ijtihad without a binding proof or argument. In other words, the Muqallid (a person who practices Taqleed) may or may not know the Daleel. In addition, one may not know the reason for using the Daleel even though they know the Daleel.

There are two types of Muqallid:

A. Muttabi'a: Is the follower who acquaints himself with the Daleel (evidence) used by the Mujtahid to arrive at the Ahkam but he does not have to comprehend the reason for using the specific Daleel.

B. 'Ammi: Is one who follows a Mujtahid's Ijtihad without asking for a Daleel.

11.1 Daleel for performing Taqleed

وَمَا أَرْسَلْنَا مِنْ قَبْلِكَ إِلَّا رِجَالًا نُوحِي إِلَيْهِمْ فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ

"We have not sent before thee but men whom We reveal to them. So ask the people of knowledge if you know not".(TMQ An-Nahl: 43)

This Ayah was revealed in response to the disbelievers' argument who rejected Muhammad (saw) was a human being. However the wording of the Ayah is general and what matters are the generality of the wording and not the specificity of the cause (Al-'ibra bi 'umum al-lafz laa bi khususiyyat al-sabab). Moreover, it is not about a specific subject, it is general about the request from those who do not know to ask those who do know. For it requests the Mushrikeen to ask the People of the Book to teach them that Allah (swt) has not sent to previous nations Messengers who were not

human beings. They were ignorant of this information so He (swt) ordered them to ask those who know.

The word 'Fas'alu' (ask) has come with a general import i.e. ask in order to learn. It is related to knowledge and not to belief (Iman). Although the people of Zikr mentioned in the verse are the People of the Book, the term came in a general manner and it includes all people of Zikr, whether Muslims or non-Muslims. The Muslims are the people of Zikr because the Qur'an is a Zikr. He (swt) said:

بِالْبَيِّنَاتِ وَالزُّبُرِ وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ وَلَعَلَّهُمْ يَتَفَكَّرُونَ

"And We have also sent down to you (O Muhammad [saw]) the Zikr (reminder and advice [i.e. the Qur'an]), that you may explain clearly to men that which was sent down to them, and that they may give thought." (TMQ An-Nahl: 44)

Hence, Taqleed only in the Hukm Shar'i is allowed for every Muslim. This understanding is further supported by the following Hadith.

Jabir (ra) has narrated that one man suffered a wound to his head. Whilst sleeping he had a wet dream. He asked the companions if he could make Tayammum. They said that he had no excuse for not performing Ghusl. After performing Ghusl the man died. When the Prophet (saw) was informed of the incident he (saw) said:

« إِنَّمَا كَانَ يَكْفِيهِ أَنْ يَتَيَمَّمَ وَيَعْصِرَ أَوْ يَعْصِبَ شَكَّ مُوسَى عَلَى جُرْحِهِ خِرْقَةً ثُمَّ يَمْسَحَ عَلَيْهَا وَيَغْسِلَ سَائِرَ جَسَدِهِ ◌ُ»

"Verily it was enough for him to do Tayammum, to place a piece of cloth on his head, which he should then wipe

(Masah) and then for him to wash the rest of his body". (Abu Dawud & Ahmad)

He (saw) then said:

« أَلَا سَأَلُوا إِذْ لَمْ يَعْلَمُوا فَإِنَّمَا شِفَاءُ الْعِيِّ السُّؤَالُ »

"They (the companions) should ask if they do not know."[42]

Thus, the Prophet (saw) made it very clear to the companions that they should ask about the ruling if they are not aware of it.

It has been authentically reported that al-Sha'bi said: "There were six companions of the Messenger of Allah (saw) who used to deliver legal opinions to the people. Ibn Mas'ud (ra), Umar b. al-Khattab (ra), 'Ali b. Abi Talib (ra), Zayd b. Thabit (ra), Ubayy b. Ka'b (ra), and Abu Musa (ra). Three used to leave their opinion for the opinion of the other three. Ibn Mas'ud used to leave his opinion for Umar's opinion, Abu Musa used to leave his opinion for the opinion of 'Ali and Zayd used to leave his opinion for the opinion of Ubayy b. Ka'b." This also indicates that the Muslims used to imitate the Sahabah and some of them used to imitate each other.

11.2 Muslims must ask for Daleel

Having given the Daleel for the permissibility of practicing Taqleed in Islam, it is crucial to point out that the follower must, when an issue confronts him, ask about its Hukm and Daleel. Our worship includes the pursuit of knowledge. As slaves of Allah (swt) we must know Allah's rule for every action we perform.

Narrated by Abdullah bin Amr: I heard the Prophet (saw) say:

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[42] Abu Dawud: 275, Ibn Majah: 565, Ahmad: 2898.

« إِنَّ اللَّهَ لَا يَقْبِضُ الْعِلْمَ انْتِزَاعًا يَنْتَزِعُهُ مِنْ الْعِبَادِ وَلَكِنْ يَقْبِضُ الْعِلْمَ بِقَبْضِ الْعُلَمَاءِ حَتَّى إِذَا لَمْ يُبْقِ عَالِمًا اتَّخَذَ النَّاسُ رُءُوسًا جُهَّالًا فَسُئِلُوا فَأَفْتَوْا بِغَيْرِ عِلْمٍ فَضَلُّوا وَأَضَلُّوا »

"The Prophet (saw) said: "Allah does not remove the 'Ilm after it was given to you, rather the 'Ilm would be removed with the death of the 'Ulema. Then some people, who are ignorant, will start giving their Ra'ee (opinion) based on their desires and they are misled and will lead the Ummah astray." (Bukhari & Ahmad)

For Muslims to avoid the consequence of this Hadith, they must ask for a Daleel before performing Taqleed.

11.3 Taqleed is forbidden in the 'Aqeedah (Belief)

It should be clear that the subject of Taqleed is limited to the Hukm (rule) and does not include the 'Aqeedah (Belief). It is forbidden to make Taqleed in the creed, i.e. 'Aqeedah because Allah (swt) has censured the Muqallids (imitators) in 'Aqeedah. Allah (swt) has mentioned this in many verses:

وَإِذَا قِيلَ لَهُمُ اتَّبِعُوا مَا أَنْزَلَ اللَّهُ قَالُوا بَلْ نَتَّبِعُ مَا أَلْفَيْنَا عَلَيْهِ آبَاءَنَا أَوَلَوْ كَانَ آبَاؤُهُمْ لَا يَعْقِلُونَ شَيْئًا وَلَا يَهْتَدُونَ

"And if they said to them follow what Allah has revealed, they said but we follow what our fore fathers left for us. Even if their fathers understood not, and were not guided". (TMQ Al-Baqarah: 170)

هَلْ عِنْدَكُمْ مِنْ عِلْمٍ فَتُخْرِجُوهُ لَنَا إِنْ تَتَّبِعُونَ إِلَّا الظَّنَّ

"Do you have Ilm for that which you claim so that you provide us with? You follow nothing but conjecture (Zann)." (TMQ Al-An'am:148)

إِنْ هِيَ إِلَّا أَسْمَاءٌ سَمَّيْتُمُوهَا أَنْتُمْ وَآبَاؤُكُمْ مَا أَنْزَلَ اللَّهُ بِهَا مِنْ سُلْطَانٍ إِنْ يَتَّبِعُونَ إِلَّا الظَّنَّ وَمَا تَهْوَى الْأَنْفُسُ وَلَقَدْ جَاءَهُمْ مِنْ رَبِّهِمُ الْهُدَى

"These are nothing but names which you have devised, you and your fathers, for which Allah has sent down no authority. They follow nothing but conjecture and what their Nafs desire. Even though there has already come to them the Guidance from their Lord" (TMQ An-Najm: 23)

11.4 Muqalid shifting from one Opinion to Another

Sometimes it occurs to a person that he can choose between two rules derived from the Ijtihad of two Mujtahideen. For example, does touching one's wife break the Wudhu? Imam Shafi'i says yes. Imam Abu Hanifah says no.

Both opinions are based on the Daleel. Some say that Islam is easy therefore choose the easiest. After all both are Islamic opinions. To follow one of the opinions because of one's desires is totally Haram (forbidden). As following an Islamic opinion means following the Hukm Shar'i. The obedience to Hukm Shar'i is not based on hardship, easiness or benefit. How then does a Muqallid choose between two Islamic opinions?

Allah (swt) says:

فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ

"If you dispute in a thing return it to Allah and the Prophet" (TMQ An-Nisa: 59)

The Muqallid should return to Allah (swt) and the Prophet (saw). In practice, it means choosing the Mujtahid whom he is convinced with as having the correct ruling for the issue. Choosing the correct Mujtahid can be achieved through:

Studying the opinion of the Mujtahideen and following the one that is most convincing. If a Muqallid does not know the evidence or is unable to verify the strength of the evidence, the best qualification to look for in a Mujtahid is a high degree of knowledge and Taqwa.

As a note of caution, it should be understood that one is not making Taqleed to the personality of the Mujtahid himself. If one follows a Madhab, one is not following a founder because of his personality, but because one believes that he had the correct understanding of Hukm Shar'i on the issue. One must realise that he is obeying the Hukm Shar'i not Imam Abu Hanifah or Imam Shafi'i.

Following the Ijtihad of a Mujtahid is permitted in Islam. Qur'an, Sunnah, and Ijma as-Sahabah support this. Throughout our history the Muslims have been practicing Taqleed, to the extent that at one stage the door of Ijtihad was closed and everyone was making Taqleed. This step was wrong because the existence of Mujtahideen in the Ummah is Fard (obligatory).

The problem we face today is not the problem of Taqleed, but the problem of ignorance. Even if everyone reaches a very high level of Islamic knowledge, some people will still be practicing Taqleed as happened during the time of the Sahabah (ra) and Tabi'een.

We acknowledge that the loyalty to the Madhab has resulted in many problems, but this is a fault of the people's ignorance and not the existence of the Madhab. If the Madhahib were abolished and everyone was forced to make Ijtihad by himself or herself, the Muslims would be lost. In the same way that not all people are capable of becoming surgeons or lawyers, we cannot expect everyone to reach the level of a Mujtahid.

Taqleed is a necessity for those who are not capable of extracting the Hukm (ruling) directly from the text. This matter applies on all Muslims who do not know the Arabic language, Fiqh, etc.

Nevertheless, three crucial points need to be made on the subject of Taqleed:

A. Taqleed should not be practiced with any sense of partisanship to a particular Madhab. It is nothing more than the adoption of a particular school of thought. No one can or should claim that a particular Madhab is the only Islamic Madhab or that it has supremacy over others.

B. The obedience is to the Hukm Shar'i and not to a Mujtahid.

C. Muslims should be encouraged to acquire the skills necessary to perform Ijtihad and thus should be encouraged to learn the Daleel for the rulings they are following. This will provide Muslims with knowledge in Fiqh as well as the action itself. Allowing Taqleed should not be taken as a license for endorsing ignorance or discouraging Muslims from enriching themselves in acquiring the tools necessary for making Ijtihad.

Topics Related To Islamic Jurisprudence

12.1 Wahy (Revelation)

Angel Jibreel (as) revealed the Qur'an unto the Prophet (saw). The angel came for the first time when Muhammad (saw) was in the cave of Hira and revealed to him (saw) Surah Al-Alaq. During the early periods of the revelation, Prophet (saw) used to move his (saw) lips quickly in order to catch up to the words to memorise it, while Jibreel (as) used to recite it. Thereupon, Allah (swt) revealed:

لَا تُحَرِّكْ بِهِ لِسَانَكَ لِتَعْجَلَ بِهِ (16) إِنَّ عَلَيْنَا جَمْعَهُ وَقُرْآنَهُ (17) فَإِذَا قَرَأْنَاهُ فَاتَّبِعْ قُرْآنَهُ (18) ثُمَّ إِنَّ عَلَيْنَا بَيَانَه (19)

"Move not your tongue (repeating the words of revelation) for behold it is for Us to gather it (in your heart) and to cause it to be read (as it ought to be read). Thus, when We recite it follow through its wording (with all your mind) and then behold it will be for Us to make its meaning clear." (TMQ Al-Qiyamah: 16-19)

Neither Muhammad (saw) nor Jibreel (as) used to control the timing of the revelation. Muhammad (saw) once asked Jibreel (as) why is it that you do not visit more often?

The following Ayah was revealed in response to this question.

وَمَا نَتَنَزَّلُ إِلَّا بِأَمْرِ رَبِّكَ لَهُ مَا بَيْنَ أَيْدِينَا وَمَا خَلْفَنَا وَمَا بَيْنَ ذَلِكَ وَمَا كَانَ رَبُّكَ نَسِيًّا

"We do not descend but by the command of your Rabb. To him belongs what is before us, what is behind us, and what is between. And your Rabb never forgets" (TMQ Maryam: 64)

Jibreel (as) used to come every year for the purpose of listening to the Qur'an from Muhammad (saw) and checking the memorisation. In the year in which Muhammad (saw) passed away, Jibreel (as) went to Muhammad (saw) twice to listen to his (saw) recitation.

12.1.1 Forms of Wahy

Although the word Wahy (revelation) was used linguistically in various meanings in the Qur'an, as a term it means:

A. Allah's (swt) teachings revealed through a medium to one of His Messengers.

The Wahy could mean the speech of Allah (swt) or could mean the process of relaying it to the Prophets, or the angel who used to carry the Message from Allah (swt) to the Prophets.

Those who claim to be Messengers must provide proof that they have actually received the revelation. This proof is called Mu'jizah or miracle. Miracle is the actual altering of one or more of the natural or universal laws. Since any such altering can only be achieved by the Will of Allah (swt), if a person is imbued with any such ability then such a person could only have done so by the Will of Allah (swt). This would prove that whatever he has was sent by Allah (swt). Regarding this issue, Allah (swt) says:

وَمَا كَانَ لِبَشَرٍ أَنْ يُكَلِّمَهُ اللَّهُ إِلَّا وَحْيًا أَوْ مِنْ وَرَاءِ حِجَابٍ أَوْ يُرْسِلَ رَسُولًا فَيُوحِيَ بِإِذْنِهِ مَا يَشَاءُ إِنَّهُ عَلِيٌّ حَكِيمٌ

"It is not fitting for a human that Allah would speak to Him by revelation or behind a veil or by sending of the angel of revelation to reveal, with Allah's permission, what Allah wills." (TMQ Ash-Shura: 51)

The Ayah mentions the three forms of revelation:

Talking to a Prophet behind a veil. This happened to Musa (as)

وَكَلَّمَ اللَّهُ مُوسَى تَكْلِيمًا

"And to Musa Allah Spoke" (TMQ An-Nisa: 164)

This also happened to Muhammad (saw) once and was mentioned in Surah An-Najm: 5-10

عَلَّمَهُ شَدِيدُ الْقُوَى ﴿5﴾ ذُو مِرَّةٍ فَاسْتَوَى ﴿6﴾ وَهُوَ بِالْأُفُقِ الْأَعْلَى ﴿7﴾ ثُمَّ دَنَا فَتَدَلَّى ﴿8﴾ فَكَانَ قَابَ قَوْسَيْنِ أَوْ أَدْنَى ﴿9﴾ فَأَوْحَى إِلَى عَبْدِهِ مَا أَوْحَى

"He was taught by one Mighty in Power. Endued with Wisdom: For he appeared (in stately form). While he was in the highest part of the horizon. Then he approached and came closer, and saw at a distance of but bow lengths or (even) nearer. So did (Allah) convey the inspiration to His Servant - (Conveyed) what He (meant) to convey" (TMQ An-Najm: 5-10)

B. Relaying the meaning to the Prophet (saw)either while he is awake or sleeping (dream)

C. Sending of the Angel Jibreel (as) himself:

نَزَلَ بِهِ الرُّوحُ الْأَمِينُ ﴿193﴾ عَلَى قَلْبِكَ لِتَكُونَ مِنَ الْمُنْذِرِينَ ﴿194﴾

"With it comes down the truthful spirit to your heart." (TMQ Ash-Shu'ara: 193-194)

Jibreel used to come in the following forms:

1. The loud ringing of a bell, heard only by the Prophet (saw).

The Prophet (saw) says:

« أَحْيَانًا يَأْتِينِي فِي مِثْلِ صَلْصَلَةِ الْجَرَسِ وَهُوَ أَشَدُّهُ عَلَيَّ فَيَفْصِمُ عَنِّي وَقَدْ وَعَيْتُ مَا قَالَ »

"Sometimes the Wahy comes like the ringing of the bell and this is the hardest of all. When this state passes, I grasp what was revealed." (Bukhari)

When this would happen, those who were around the Prophet (saw) would realise the presence of the Wahy without being able to sense or comprehend it. It was reported on the authority of Aisha bint Abu Bakr (ra):

« لَقَدْ رَأَيْتُهُ يَنْزِلُ عَلَيْهِ فِي الْيَوْمِ الشَّدِيدِ الْبَرْدِ فَيَفْصِمُ عَنْهُ وَإِنَّ جَبِينَهُ لَيَتَفَصَّدُ عَرَقًا »

"I saw the Prophet (saw) once receiving the revelation on a very cold day and noticed the sweat dropping from his forehead once the revelation was over." (Bukhari)

2. In the shape of a man.

« وَأَحْيَانًا يَتَمَثَّلُ لِي الْمَلَكُ رَجُلًا فَيُكَلِّمُنِي فَأَعِي مَا يَقُولُ »

"And sometimes, the angel would come in the form of a man." (Bukhari)

3. The angel would come in the form of his original shape, as it was the case at the first time of the revelation.

12.1.2 Differences between the Revelation of Qur'an and Sunnah

Although the Wahy has different forms, the Qur'an was revealed directly through the angel of revelation, Jibreel (as). It was never revealed to the Prophet (saw) by a dream or any other means. The Sunnah, however, can be revealed to the Prophet (saw) through any of the aforementioned forms of al-Wahy. Needless to say, all forms of Wahy have the same validity. The Prophet (saw) said:

« يوشك احدكم ان يقول هذا كتاب الله ما كان فيه من حلال احللناة وما كان من حرام حرمناه الا ان بلغه عنى حديث فكذب به فقد كذب الله ورسوله والذى حدثه »

"One of you who while reclining says, 'this is the book of Allah (Qur'an), what is in it from that is halal, we'll use as halal, and what is in it from the Haram, we'll take as Haram'. But whoever delivers from me a Hadith and he lies in it, he has told a lie on Allah and His Messenger." [43]

The Qur'an and Sunnah are the only two ways by which Allah (swt) has chosen to reveal Islam. The revelation can be of two kinds:

A. By the word and meaning
B. By meaning alone

The Qur'an was revealed with the words and its meanings. For example, the words "Maliki youm middiin" in Surah al Fatihah are revealed by Allah (swt) with the words and its meaning. The Prophet (saw) did not insert or delete any part of the Qur'an. On the other hand, the Sunnah is revealed by the meaning and the Prophet (saw) expressed it in his (saw) own words.

12.2 Role of 'Aql

To some, the subject of the role of intellect in Islam seems quite bizarre. Unfortunately, the lack of awareness about Islam yields

[43] Both of the above mentioned Ahadith are reported in many sayings by Abu Dawud, Ahmad and many others.

such an understanding. Through researching the Qur'an and the life of the Prophet (saw) it is apparent that much emphasis was placed on this subject by the revelation. It is natural for the revelation to address this subject because in order to formulate a specific behaviour, the individual's way of thinking must be addressed. When the revelation addressed this crucial issue it did so in such an effective manner that it took only one Ayah for the entire society to abstain from alcohol.

Prophet Muhammad (saw) not only clarified matters of law to the people that dealt with their actions but also directed their intellect and clarified its limitation.

This is evident when the sun eclipsed during the time of the Prophet (saw) on the same day that his (saw) son Ibraheem (ra) died. When people suggested that the sun eclipsed because of the Prophet's (saw) son's death, he (saw) told them that the sun and the moon are signs from Allah (swt). They do not eclipse for someone's death or birth; therefore there is no relationship between the two events.

The method of directing the intellect and sound principles of reason were at work when the Prophet (saw) cleared the misunderstanding of a group of people when they said that rain occurs due to the influence of the star, telling them that the Lord of the star, Allah (swt), causes the rain to occur. These are just two of the many examples addressing the role of the intellect.

Having understood that Islam directed the people's intellect, the next question, which arises, is what exactly is the position of the intellect in Islam?

In Islam the role played by the intellect is a very significant one. The intellect is used to understand and accept the Islamic 'Aqeedah (doctrine) and is the only acceptable method to enter Islam. Islam compels the use of the intellect to believe in Allah (swt) and forbids imitation (Taqleed) in 'Aqeedah.

Islam provides rational evidences to prove the existence and the oneness of Allah (swt), the Prophethood of Muhammad (saw), and that the Qur'an is the word of Allah (swt). Thus the foundation of Islam is built upon conviction through the intellect. Through this sound proof, the intellect and the heart are satisfied and devoid of any blind faith and superstitions.

Since the authenticity of the Qur'an and Prophethood of Prophet (saw) is built upon the intellect, the belief in beings such as the angels and Jinns, or descriptions of heaven and hell are based upon the authenticity of the Qur'an and the Prophethood of Muhammad (saw).

Once the 'Aqeedah of Islam is arrived at intellectually, the intellect then plays a different role. It plays a role of only understanding the issue and the revelation and then applying the revelation to the issue. The intellect uses the revelation as a source to derive rulings on any issue, from Wudhu (ablution) to the foreign policy of the Islamic State.

It is important to realise that the intellect cannot be used to conjure up a reason for a ruling, unless the reason is mentioned in the text. Claiming a reason for any ruling implies that we can comprehend what Allah (swt) intended for that ruling, which is impossible. For example, we cannot use the intellect to infer a reason for why we perform Wudhu. The intellect would probably lead one to assume that it is for the sake of personal hygiene.

However, if water is not accessible then we are supposed to do Tayammum (a series of actions requiring one to wipe themselves with dust). If the reasoning behind Wudhu were cleanliness, then why would Allah (swt) order us to wipe ourselves with dust if water is inaccessible?

The proper use of the intellect can be seen in the actions of the Sahabah (ra). During the battle of Badr the Prophet (saw) had

stationed the army at a certain location. Habab bin al-Munthir (ra) inquired from the Prophet (saw) whether his (saw)'s decision was based on the revelation or a tactical decision. The Prophet (saw) replied by saying that it was a tactical decision. Upon this Habab bin al-Munthir said that the location was a wrong one. From this incident we can see that the Sahabah (ra) recognised the fine line between the revelation and the intellect. They never used their thinking to pass judgments on the revelation.

In other ideologies the intellect plays a role that it cannot fulfil. In Western democracies, intellect is given the unlimited role of organising man's life; however, it is subject to biases, disparity, differences, contradictions, and the influence of the environment. However, in Islam the intellect is not used to legislate, but to understand the revelation and to apply it.

With regard to the intellect, Muslims need to have the same awareness of the fine line between revelation and 'Aql that Habab bin al-Mundthir (ra) had. Unfortunately, Muslims have begun to exercise their intellect to pass on the rulings given to us by Allah (swt), e.g. Salah is good exercise, fasting is good for the body, etc. Furthermore, in some cases Muslims have started to prefer the ruling of man-made laws to those of the Creator of the Universe, Allah (swt).

12.3 Does the Shariah Apply on Non-Muslims?

Allah (swt) says:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِلْعَالَمِينَ

"We have sent you not but as a mercy for all creatures." (TMQ al-Anbiya: 107)

وَمَا أَرْسَلْنَاكَ إِلَّا كَافَّةً لِلنَّاسِ بَشِيرًا وَنَذِيرًا وَلَكِنَّ أَكْثَرَ النَّاسِ لَا يَعْلَمُونَ

"We have sent you but as a Messenger to all mankind, giving them glad tidings, and warning them against sin, but most men know not." (TMQ Saba: 28)

These Ayahs are very clear that the Prophet (saw) was sent for the whole humanity and not just for the Muslims. Furthermore, the Prophet (saw) applied Islam on the non-Muslims in the Islamic State. Thus, the non-Muslims were subjected to the same Islamic system of ruling, economics, punishments and judicial processes as Muslims were without any discrimination. However, the performance of prayer, fasting, etc. is only accepted from the Muslims since the prerequisite for performing these acts of 'Ibadah (worship) is to be a Muslim.

Finally, based on Islam, the Non-Muslims are allowed to practice their own religion, marital, divorce affairs according to their beliefs. Furthermore, they are treated in the matters of food and clothing according to their religion, within the rules of the Shari'ah.

12.4 Was Prophet Muhammed (saw) A Mujtahid?

As defined earlier, a Mujtahid is a person who studies the problem thoroughly and seeks the solution from the sources of Shari'ah. However, the Messengers, bring the Message, which includes the Shari'ah. There is an apparent difference between the two terms. One brings the Shari'ah while the other goes to the Shari'ah to extract rulings. Also, Prophet (saw) was guided by the revelation. Allah (swt) says:

وَمَا يَنْطِقُ عَنِ الْهَوَى (3) إِنْ هُوَ إِلَّا وَحْيٌ يُوحَى (4)

"Nor does he speak of his desire. It is no less than revelation sent down to him." (TMQ An-Najm: 3-4)

The Mujtahideen are not guided by the revelation because there is no more revelation after Muhammad (saw). A Mujtahid's Ijtihad can be wrong. The Prophet (saw) says:

« إذا اجتهد الحاكم فأصاب فله أجران اثنان ، وإذا اجتهد فأخطأ فله أجر واحد »

"Whosoever does Ijtihad and errs therein shall have one reward. And whosoever performs Ijtihad and is correct shall have a double reward." (Bukhari & Muslim).

If Prophet (saw) is considered a Mujtahid then there is a possibility of him (saw) making a mistake in delivering the Message and then the revelation corrected him (saw). Then this implies that in the time it takes for the revelation to correct the matter, the Message delivered by Muhammad (saw) was wrong which is completely absurd.

The arguments which are brought in support of the Prophet (saw) being a Mujtahid, are:

When a blind man came to learn Islam from him (saw) and Allah (swt) in this regard addressed the attitude of the Prophet (saw). Allah (swt) says:

عَبَسَ وَتَوَلَّى (1) أَنْ جَاءَهُ الْأَعْمَى (2) وَمَا يُدْرِيكَ لَعَلَّهُ يَزَّكَّى (3) أَوْ يَذَّكَّرُ فَتَنْفَعَهُ الذِّكْرَى (4) أَمَّا مَنِ اسْتَغْنَى (5) فَأَنْتَ لَهُ تَصَدَّى (6) وَمَا عَلَيْكَ أَلَّا يَزَّكَّى (7) وَأَمَّا مَنْ جَاءَكَ يَسْعَى (8) وَهُوَ يَخْشَى (9) فَأَنْتَ عَنْهُ تَلَهَّى (10) كَلَّا إِنَّهَا تَذْكِرَةٌ

"(The Prophet (saw)) frowned and turned away, because there came to him the blind man (interrupting). But what could tell you per chance he might grow in purity? Or that he might receive admonition and the reminder might profit him? As to the one who

regards himself as self sufficient, to him does you attend. Though it is no blame to you if he grows not in purity. But as to him who came to you striving earnestly and with fear (in his heart) of him as though unmindful. By no means (should it be so) for it is indeed a Message of remembrance." (TMQ Abasa 1-11)

The Ayah is addressing what happened with Abdullah ibn Ummi Muktum when he came to the Prophet (saw), wanting to learn the Qur'an while the Prophet (saw) was giving Da'wah to one of the heads of Quraysh.

In this situation the Prophet (saw) had two options, either to attend to Abdullah ibn Ummi Muktum or continue the Da'wah with the heads of Quraysh; he (saw) chose the latter. Both actions were Mubah (permissible) and Allah (swt) preferred for him (saw) the other option. Moreover, the structure of the Ayah does not indicate the Prophet's (saw) choice as being Haram!

The other Ayah, which is brought, is during the battle of Badr:

مَا كَانَ لِنَبِيٍّ أَنْ يَكُونَ لَهُ أَسْرَى حَتَّى يُثْخِنَ فِي الْأَرْضِ تُرِيدُونَ عَرَضَ الدُّنْيَا وَاللَّهُ يُرِيدُ الْآخِرَةَ وَاللَّهُ عَزِيزٌ حَكِيمٌ

"It is not fitting for a Prophet (saw) that he should have prisoners of war until he has thoroughly subdued the land. You look for the temporal goods of this world. But Allah looks to the Hereafter. And Allah is Exalted in might, Wise." (TMQ al-Anfal: 67)

In the succeeding Ayah Allah (swt) mentions that no sin was committed when the Prophet (saw) took in prisoners for ransom.

لَوْلَا كِتَابٌ مِنَ اللَّهِ سَبَقَ لَمَسَّكُمْ فِيمَا أَخَذْتُمْ عَذَابٌ عَظِيمٌ

"Had it not been for a previous ordainment from Allah, a severe punishment would have reached you for the (ransom) that you took." (TMQ al-Anfal: 68)

Again even in this incident the Prophet (saw) had two options: either to keep on killing the Kuffar or to stop and take the Kuffar as ransom. He (saw) chose the latter option, but Allah (swt) preferred for him (saw) to continue on killing the Kuffar in the battlefield. Thus, neither argument supports the claim that the Prophet (saw) was a Mujtahid.

12.5 Can Fiqh Be Changed?

Some "scholars" claim that there is no problem in changing the Fiqh due to the change in environment or circumstances. The proponents of this view give the following justifications:

A. Fiqh is human interpretation while the Shari'ah is Hukm Shar'i, which Allah (swt) revealed. The Shari'ah is the Wahy (revelation) but Fiqh is open to different interpretations. Thus, Fiqh is not a revelation and can be changed.

B. Some rules in Islam are based on 'Urf (traditions); the emergence of new traditions would trigger a change in the Fiqh.

C. The Sahabah (ra) have changed some rulings of the Prophet (saw). For example, if the camel was misguided the Prophet (saw) recommended leaving it because it will find its own way. On the other hand, Umar (ra) asked the people to bring the lost camels to the Islamic State where the camels can be kept for the owners to claim them.

D. Imam Shafi'i changed his Madhab when he went to Egypt due to the new environment.

Some scholars went as far as to say that the Jizya can be cancelled because in the past the non-Muslims didn't participate in the

Muslim army, but now they are participating in the army and defending the land; therefore, they no longer have to pay Jizya.

Others expressed that the unity of the Muslim Ummah is not a must, and the reason that 50+ states exist is because of life's complexity. They arrive at the conclusion that we are no longer in need of the Khilafah because rules are subject to change.

Islam has come to organise and regulate man's organic needs and instincts. The rules for this regulation cannot be changed. But as new problems arise, we need new rules, and this is the task of the Mujtahid. Carefully note that this is not considered changing the rules at all.

Fiqh is the totality of Hukm Shar'i taken from the Islamic sources (Qur'an, Sunnah etc). Thus, Fiqh is not a body of man-made laws because it is based on these sources. Ijtihad is the process of understanding, studying, and analysing the texts and extracting rulings.

Evidence from the sources of Shari'ah to justify the extracted ruling is an indispensable part of Ijtihad. The human effort in Ijtihad does not produce man made laws. The Mujtahid cannot take two different rulings for the same issue at the same time; however, he may later discover the misunderstanding of his Daleel and choose another ruling. Thus, there is no difference between Fiqh and Shari'ah.

The Sahabah (ra) did not change the Fiqh in any way whatsoever. What they did can be categorized as one of the following:

Applying a rule by having its Daleel or changing a rule for another Daleel

The Khaleefah has the responsibility for taking care of the Ummah's affair in any way he finds most effective. This may change from time to time. For example, Umar (ra) asked the people

to bring the lost camel to the State authority. While, the Prophet (saw) said to leave the camel and it will find its own owner. During the days of Umar (ra) the State was growing and someone had to take care of this matter. Since the Khaleefah is the caretaker of the Ummah, Umar (ra) asked the people to bring the camel to the state.

What Imam Shafi'i did was that he changed his methodology completely; this point was discussed earlier in the book.

If some rulings are connected with the 'Urf (custom), the ruling may differ from one place to another but this is not changing the Fiqh because the ruling still exists. For example, a custom might dictate that the dowry should not be mentioned. This is acceptable because the ruling to pay the dowry must still be carried out. In other words, if dowry were not mentioned in the contract, then the judge would look at the 'Urf (custom) of the city or village and compare the dowry of another woman with a similar status. Another example is of a worker employed without specifying the wage, then the judge would observe what the people paid for a similar job.

12.6 Need for a Minority Fiqh?

The development of a Fiqh tailored towards the Muslims of a country where Muslims are a minority like North America, India or the European countries has been of recent discussion in some Muslim organisations. The justification for "Minority Fiqh" is two fold. First, the argument is that the old Fatwas are no longer applicable and reinterpretations are necessary in order for Islam to be applicable to Muslims in these countries. Secondly, that Muslims in these countries face problems that never existed before, and the solutions to these problems have to be applicable to those specific problems that are faced by them.

Dr Taha Jabir al-Alwani, a leading advocate of this innovative methodology, terms Fiqh al-Aqaliyaat or Fiqh of Minorities as: "…the idea that the Muslim Jurist must relate the general Islamic

jurisprudence to the specific circumstances of a specific community, living in specific circumstances where what is suitable for them may not be suitable for others."[44] He continues to say that the: "...jurist must not only have a strong background in Islamic sciences, but must also be well versed in the sociology, economics, politics, and international relations relating to that community." He claims that the purpose of Fiqh al-Aqaliyaat was not to: "…recreate Islam, rather it is a set of methodologies that govern how a jurist would work within the flexibility of the religion to best apply it to particular circumstances."

We can see from scrutinising this philosophy and its justifications, that this approach makes the particular situation that is faced, or the environment in general, the source of legislation. It is a wholly pragmatic approach. As a consequence, it has led to the neglect of certain shariah rules to the contradiction of what has been established with certainty from the Qur'an and Sunnah.

The arguments used to justify "Minority Fiqh", such as the need for Ulema "groomed" in the West or reinterpreting the Shari'ah so as to make it applicable in non-Muslim majority countries are emanating from a defeated mentality and un-Islamic perspective.

From the Islamic perspective, the locality of the Mujtahid does not validate or invalidate his Fatwa. This has never been a prerequisite for issuing a Fatwa, by definition, the Mujtahid, whether living in America or in the Sahara Desert, has to be versed in the Shari'ah as well as the problem before issuing any ruling. If a Mujtahid in Egypt were able to understand the problem correctly, his Ijtihad would be acceptable. Our discussion, therefore, should be limited to the ability of the Mujtahid rather than his location.

An issue such as an American woman accepting Islam while her husband remains a non-Muslim is not a new issue. This problem occurred at the time of the Prophet (saw) when his (saw) daughter

[44] http://www.isna.net/library/papers/fiqh/FiqhofMinorities1.asp

Zaynab accepted Islam while her husband remained a non-Muslim. Therefore, in order to solve this problem today, we need to go back to the legal texts and study them in order to acquire the Islamic ruling. This applies to all other issues as well.

With regards to issues involving adoption, wills, inheritance, and burial, these have rules, which are discussed extensively in Islam and cannot be changed. As for the new problems, this requires a Mujtahid to extract rulings whether the problem happens in the East or the West.

The idea of an American, European or Indian Fiqh, is an alien concept that seeks to distort the nature of Islam. The Shari'ah is being treated as a man made law rather than that of Allah, the Supreme. This is a result of a defeated mentality that seeks to change the Shari'ah to fit the society rather than changing the society to conform to the Shari'ah.

Does not the Seerah of Prophet Muhammad (saw) inspire in us the motivation to change the circumstance to apply what Allah (swt) ordered? If Muslims are allowed to reinterpret the Shari'ah according to the environment, we will no longer need the Shari'ah from Allah (swt) to organise our lives. This amounts to nothing short of assuming the role of the Shar'i (legislator), Allah (swt).

Even though we have Hanafi, Shafi'i, Maliki and other schools of Fiqh, none of the founders of these schools developed their Fiqh based on their environment. This is a new idea propagated as a stepping-stone towards a new Islam, one that is based on a "Western Fiqh", and a Western 'Aqeedah. The differences in Fiqh amongst the Mujtahideen were due to differential understanding of the text of the Qur'an and Sunnah, not the reinterpretation of the Shari'ah to conform to the environment.

The Muslim Ummah does not need an "American Fiqh", "European Fiqh" or an "Indian Fiqh" because these terms themselves are wrong. There is no Egyptian, Pakistani, American,

Indian or Palestinian Islam in order to have an Egyptian, Pakistani, American, Indian or Palestinian Fiqh. There is only one Islam and only one Fiqh!

Some Muslims claim that since Muslims in the West are minorities, this constitutes grounds for establishing a Minority Fiqh. For instance, a preposterous claim is made that some of the rules of the "classical" Fiqh cannot be applied in an un-Islamic Society, including Riba.

First of all, to have a minority mindset is alien to Islam. If Prophet (saw) thought and acted as a minority to establish minority rights in Makkah we would probably not be Muslims today. The Prophet (saw) called for the comprehensive establishment of Islam. This was the attitude of the Prophet (saw) from the very beginning of the Da'wah. Thus, Muslims should not think of themselves as minorities but rather as carriers of a Message from Allah (swt).

The Ahkam (rules) in Islam are of two types:

a) Rules related to individuals such as praying, fasting, etc. Every Muslim has to abide by these types of 'Ibadah whether Islam is applied or not applied in a society and whether the person is living in Makkah, Delhi or Paris.

b) Rules, which cannot be applied except through the agency of the Khilafah State, such as applying the Hudud (punishment) collecting Jizya, etc.

It is not the responsibility of an individual to apply any punishment on behalf of the State. This principle applies to Makkah or Paris. Whether a person lives in the Islamic State or not, he has to abide by the rules related to individuals. However, living in a non-Islamic society does not signal a green light for Muslims to justify, patch, compromise, or alter Allah (swt)'s rules. It should be clear to us that there is no justification for a Minority Fiqh. As Muslims, we must have a deep rational conviction that Islam is from Allah (swt)

and therefore we must accept it in its totality. This fact should motivate us to live according to Islam and to call the people to apply Islam in the society, because Islam is not just composed of rules related to individuals but is a comprehensive way of life, the Deen-ul-Haqq. The Prophet (saw) said:

« الْإِسْلَامُ يَعْلُو وَلَا يُعْلَى »

"Islam is superior and its superiority can never be surpassed."[45]

[45] Sunan Daraqtuni, Hadith no 3663

Conclusion

Presently, the decline in the Muslim Ummah, whether it is political, economic, or intellectual, is due only one reason: the absence of Islam from our lives as a comprehensive ideology.

The societies in the Muslim world are organised by un-Islamic systems, sprinkled with a few Islamic rules related to marriage, divorce, inheritance, and 'Ibadah; while, laws related to ruling, economics, education, and foreign affairs, have no Islamic orientation.

As an example, the educational curricula, to which the Muslims are subjugated, are not designed to create the Islamic personality, whereby the individual judges and evaluate issues of life according to Islam.

On the contrary, those who graduate from the educational curriculum in the Muslim World limit their belief only to the spiritual aspect of Islam. They view life based on pragmatism or benefit and consequently embark on actions rooted in these thoughts, while these actions should have been based on the Daleel from Islam.

Issues related to the Islamic 'Aqeedah itself, such as arriving at the rational conclusion in the existence of Allah (swt), are omitted from the present day curriculum. This threatens to rip apart the very fabric which binds the Muslim Ummah together; the 'Aqeedah. This threat comes in the form of a discussion of Islam as a philosophical idea or a religion dogma, lacking the ability to address contemporary problems and occurrences.

The impact of all this has resulted in a crippling effect on the presentation and comprehension of the Fiqh. People in the Muslim World view the Fiqh in the same light that people in the West view theological or divinity studies i.e. as an easy discipline, studied by

either the "religiously" inclined or by those who are not smart enough to study the sciences or technology.

This view of the Fiqh is the direct result of the deviant educational curricula present in the Muslim world. These examples are not only related to the educational system; rather, they pervade throughout the entire society, since the entire structure of the society is un-Islamic.

In the midst of this environment, how can the Ummah once again flourish? After destroying the Khilafah and then granting us pseudo-independence, the Imperialists made sure that the Muslim lands would remain ideologically and intellectually occupied. They achieved this by creating a gap in our personality whereby we would believe in the Islamic 'Aqeedah yet not view life based on it. Thus, losing the trust and confidence in the ability of Islam to solve our problems.

Consequently, it is not surprising that the educational curricula producing such confused Muslims are written by the international tool of our enemy, UNESCO, an agency of the United Nations.

Realising this, the highest priority of the Ummah must be to bring Islam back in our lives as a vibrant and comprehensive ideology. The total application and implementation of Islam will stop the current decline of the Ummah. This task must not be undermined or underestimated by the Ummah. It is a matter of life and death.

يَا أَيُّهَا الَّذِينَ آمَنُوا اسْتَجِيبُوا لِلَّهِ وَلِلرَّسُولِ إِذَا دَعَاكُمْ لِمَا يُحْيِيكُمْ
وَاعْلَمُوا أَنَّ اللَّهَ يَحُولُ بَيْنَ الْمَرْءِ وَقَلْبِهِ وَأَنَّهُ إِلَيْهِ تُحْشَرُونَ

"O you who believe! Answer the call of Allah and His Messenger, when He calls you to that which will give you life; and know that Allah comes in between man and his heart, and that it is He to whom you shall return." (TMQ Al-Anfal :24)

As mentioned earlier, we are fortunate to be from the Ummah of Muhammad (saw). This pride and honour should stimulate, motivate, and mobilise us to work to regain the rightful status of the Ummah of Muhammad (saw), as leaders of the World. An Ummah, which brings to life the Ayah:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِلْعَالَمِينَ

"We have not sent you (O Muhammad) except as a Mercy to all the Worlds" (TMQ Al-Anbiya: 107)

This Mercy can only be presented to the humanity, when the Shari'ah is implemented in totality, embodied in a state.

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Glossary

Abbassid	عبـاسي	:	The third major reign of Khilafah which began with Khaleefah Abul' Abbas as-Saffah (750-754 CE) and ended with the murder of Khaleefah al-Musta'sim (1242-1258 CE) at the hands of the Mongols.
'Adl	عدل	:	Justice, upright and just.
Ahkam	أحكام	:	Rulings and laws
Ahl al Hadith	أهل الحديث	:	(Lit. People of Hadith); a name given to the early scholars who relied mainly upon the interpretations of the revelation (Qur'an and Sunnah) and not applying Qiyas.
Ahl al Rai'	أهل الراي	:	(Lit. People of Reasoning); a name given to the early scholars who used Qiyas and Istihsan extensively as well as the Qur'an and Sunnah.
Amir al Mumineen	أمير المومنيــن	:	(Lit. leader of the believers); a title for the head of the Islamic State.
'Aam	عــام	:	General, unspecified
Amr	أمر	:	(Pl. awamir); a command to do something, matter, affair.
Ansar	أنصــار	:	(Lit. 'the helpers'); the early Muslims of Madinah who provided the Messenger of Allah (swt) with the support.
'Aql	عقـل	:	Intellect
Asbab	أسباب النزول	:	The occasions / reasons of the

unNuzul			revelations.
Al-Shaath	ألشاذ	:	A Hadith in which one credible reporter reports something that disagrees with other credible reporters.
Aathaar	آثـــار	:	(Pl. Aathaar); saying or ruling of the Prophet (saw), Sahabah (ra) or Tabi'een. It is more general than the Hadith.
'Aziz	عزيز	:	A Hadith reported by at least two individuals in every class.
Bai'a	بيـــع	:	Business transactions.
Bay'ah	بيـعـــــة	:	The oath of allegiance to the Khaleefah.
Bayan	بيان	:	Explanation, clarification.
Bid'ah	بدعـــة	:	Innovation in matters of 'Ibadah.
Dha'eef	ضعيف	:	(Lit. weak) a Hadith not meeting the requirement of either Sahih or Hasan type of Hadith.
Dalalah	دلاالـــة	:	Pertaining to the meaning of the text.
Daleel	دليـــل	:	Proof, evidence
Da'wah	دعوة	:	(Lit. 'Invitation'); propagation of Islam.
Deen	دين	:	(Lit. anything that is submitted or adhered to). Deen of Islam (Islamic ideology) - not to be confused with religion. Deen is a comprehensive way of life.
Dhaahir	ظـــاهر	:	(Pl. Dhawaahir); the obvious literal

meaning of a text from Qur'an or Hadith.

Dhanni	ظنـــي		(Lit. speculation, doubt) an evidence which has more than one meaning or an evidence which is not conclusive in proof.
Dhimmi	ذمـــي	:	Non-Muslims living under the authority of the Islamic State. They are considered as citizens of the State and given all the rights which every citizen of the Islamic State deserves.
Du'a	دعـــاء	:	(Pl. Ad'eyah); supplication to Allah (swt).
Fa'eli	فعلي	:	Actions.
Fard	فرض	:	An obligatory action. If the individual performs the action then he is rewarded. Whereas, the failure to perform the action results in a punishment.
Fasiq	فاسق	:	A Muslim who intentionally, repeatedly, and openly breaks the Islamic laws.
Fatwa	فتوى	:	(Pl. Fatawa); an Islamic legal opinion issued by a reliable individual with / without mentioning the Daleel.
Fiqh	فقـــة	:	1. Knowledge of the rulings of Shari'ah which are extracted with the legislative sources. 2. Synonymous with the term Shari'ah, i.e. all the Islamic laws.
Furoo'	فروع	:	(Sing. Fara'); branches, such as in the Furo'al-Fiqh, that is the branches of Fiqh, as opposed to its roots and sources (Usul al-Fiqh).

Gharib	غريب	:	A Hadith reported by only one individual in one or more classes.
Hadd	حد	:	(Lit. limit); prescribed punishment from Allah (swt) for a sin.
Hadith	حديث	:	(Pl. Ahadith); a report covering the sayings, actions or the approvals of the Prophet (saw).
Hajj	حج	:	A compulsory duty on all adult Muslims of sound mind and body once in a life time if they are economically able. Hajj can be defined as pilgrimage to the Ka'aba in Makkah in order to perform certain prescribed rites of worship.
Halal	حلال	:	An action or a thing considered permissible or lawful. Fard, Mandub, Makruh, and Mubah fall in the Category of Halal since there is no punishment for any of these categories of actions.
Haram	حرام	:	A prohibited action. If an individual abstains from performing it then he is rewarded; otherwise, punished.
Hasan	حسن	:	A Hadith which meets the requirement of a Sahih to a lesser degree. A Hadith accepted by the majority of the Fuqaha and documented in reliable books of Fiqh (this definition is adopted by Al-Khatabi).
Hijrah	هجرة	:	The period of migration by the Prophet (saw) and the Sahabah (ra) from Makkah to Madinah in the year 645 C.E. The Hijrah marks the establishment of the Islamic State by the Prophet (saw) and

the beginning of the Islamic calendar.

Hukm Shar'i	حكم شرعي	:	Address of the Legislator related to the actions of human being.
"Ibadah	عبادة	:	Worship.
Ijma'	إجماع	:	To determine. To agree upon something.
Ijma' al Mujtahideen	إجماع المجتهدين	:	Consensus of the Mujtahideen of the Muslim Ummah of any period following the death of the Prophet (saw).
Ijma' Ahl al Bayt	إجماع أهل البيت	:	Consensus of the household of Prophet (saw)
Ijma' Ahl al Madinah	إجماع أهل المدينة	:	Consensus of the people of Medina.
Ijma' al Ummah	إجماع الأمـــة	:	Consensus of the Ummah on a matter at anytime past, present or future.
Ijma' al Sahabah	إجماع الصحابـة	:	The unanimous agreement of the Sahabah (ra) on a point of Islamic law. This form of Ijma is the only acceptable legislative source.
Ijtihad	إجتهـاد	:	Exhausting all of one's effort in studying thoroughly and seeking the solution from the sources of Shari'ah up to the extent of feeling an inability to contribute any more.
Ikhtilaf	إختلاف	:	Juristic disagreement.
'Ilm ul Kalam	علم الكلام	:	A type of discussion related to the Islamic 'Aqeedah concerning Allah's (swt) attributes, Prophethood, etc.

During the days of the Sahabah (ra), Muslims used to be confined by the Qur'anic methodology when discussing such topics. Some

Muslims later started using Greek logic and its culture as a basis for the iscussion of the Islamic 'Aqeedah. In this process Muslims began discussing issues beyond the scope of the intellect.

Imam	إمام	:	(Lit. leader). 1. A title for the head of the Islamic State. 2. The title of the one leading the congregational prayers.
Iman	إيمـــان	:	The strong belief in the Islamic 'Aqeedah without doubt.
Islam	إسلام	:	(Lit. submission, peace).Deen revealed to Prophet Muhammad (saw) for organising man's relationship with himself, his Creator, and with other human beings. Islam is addressed to all human beings.
'Ismah	عصمـــة	:	Infallibility, immunity from making errors.
Istihsan	إستحسان	:	Shifting from one Qiyas to another Qiyas due to a reason.
Jihad	جهـــاد	:	Removing the obstacles which stand against the propagation of the Islamic Da'wah to the people.
Jizya	جزيـــة	:	A specific amount of money paid by non-Muslims living in the Islamic State to the State. It is collected only from those who can afford to pay it.

Khamr	خمـــر	:	(Lit. fermented grape juice). In Islamic law it refers to intoxicants including liquor, wine, beer, whisky, etc.
Kafir	كـافر	:	(Lit. 'one who conceals the truth) legally a non-Muslim. A person who does not believe in Islam. Many situations can cause a person to be categorised as a Kafir. Some of these are denying a part of the Islamic 'Aqeedah or a conclusive Daleel. As an example claiming that Islam is not perfect and is not applicable in the 21st Century would make a person Kafir.
Khaleefah	خليفـة	:	(Lit. Successor); the head of the Islamic State.
Khabar	خبـر	:	(Lit. news, report) synonym for Hadith.
Khilafah	خلافـة	:	The Islamic State.
Khulafah	خلفـــاء	:	The plural of Khaleefah.
Khulafah Al-Rashidun	خلفاء الراشدون	:	The rightly guided Khulafa, the first four Khulafa: Abu Bakr, Umar, Uthman and Ali (ra).
Kufr	كفـــر	:	Disbelief i.e. non-Islam.
Madhab	مذهب	:	(Pl. Madhahib); a school of thought related to Fiqh.
Makruh	مكروة	:	Disliked action. The one who abstains from performing such an action is praised and rewarded, while the one who does it is not punished.

Mandub	مندوب	:	A recommended act. The one who performs this type of act is rewarded while the one who abstains from it is neither blamed nor punished.
Mawquf	موقــوف	:	A Hadith where the Sanad ends with a Sahabi.
Marfu'	مرفــوع	:	A Hadith in which the Sanad leads to the Prophet (saw).
Mashoor	مشهــور	:	A Hadith reported by at least three individuals in every class.
Maslaha al Mursalah	مصلحــة المرسلــة	:	Accepting public interest in the absence of a legislative source from Qur'an or Sunnah.
Mahdhur	محظــور	:	A prohibited action. If an individual abstains from performing the prohibited action then he is rewarded otherwise is punished.
Mawdu'	موضــوع	:	A fabricated Hadith.
Mu'addal	معــدل	:	A Hadith which is missing two or more consecutive reporters.
Mu'allal	معلــل	:	A Hadith, whose Sanad seems to befine, but due to some hidden reasons discovered by scholars of Hadith, it is discredited.
Mu'allaq	معلــق	:	A Hadith which is missing one or more reporters whether at the beginning of the Isnad, in the middle, or in the end.
Mubah	مبـــاح	:	A type of action in which the choice is left up to the person to do or not do.

Mujtahid	مجتهـد	:	Person who can perform Ijtihad.
Mujtahid Mutlaq	مجتهـد مطلـق	:	Absolute Mujtahid; a Mujtahid who established an original method for Ijtihad such as Imam Abu Hanifah, Imam Jafar, Imam Shafi'i and others.
Munkar	منكر	:	1. A Hadith in which un-credible reporters convey a message which is in disagreement with what was reported by credible reporters. 2. Any Haram action.
Munqati'	منقطـع	:	A Hadith which has Interruption in the class.
Musnad	مسند	:	1. A Hadith which has chain of reporters. 2. Any book of Hadith organised by the name of the Sahabi who reported it. As an example, Musnad of Ahmed.
Mufti	مفتـي	:	A scholar who gives legal rulings on an issue.
Muhajir	مهاجر	:	(Lit. emigrant); refers to the one who migrated from Makkah to Medina.
Munaadharat	مناظرات	:	(Sing. MunaadHarah); a name given to debates between scholars of various Madhab on legal issues.
Munafiq	منافق	:	(Pl. Munafiqoon); one who pretends to be a Muslim while in fact disbelieves.
Mursal	مرسـل	:	A Hadith leading back to the Prophet (saw) but missing the name of the Sahabi who reported it.
Mustahab	مستحـب	:	Recommended.

Mutawatir/ Tawatur	متواتر/ تواتر	:	It is a transmitted Daleel by an indefinite number of people. Due to the large number of people reporting the Daleel, and their diversity of residence, reliability, and conviction, it is inconceivable that this Daleel could be fabricated.
Nabiy	نبي	:	Is a person who receives the revelation from Allah (swt). The last and final Nabiy is Muhammad (saw). Anyone who claims to be a Nabiy after Muhammad (saw) is a Kafir.
Nafaqah	نفقـة	:	Monetary or material support, i.e. a father supporting his aged father.
Naskh	نسخ	:	Abrogation, repeal.
Nass	نــص	:	A clear injunction, an explicit ruling.
Nafilah	نافلـة	:	A recommended act. The one who performs this type of act isrewarded while the one who abstains from it is neither blamed nor punished.
Qadi	قاضــي	:	(Pl. Qudaah): a judge
Qata'i	قطعــي	:	Conclusive, definite.
Qawli	قولي	:	Saying, verbal.
Qiyas	قيــاس	:	An extension of Shar'i ruling from an original case to a new case because of the equivalence of 'Illah (causes) underlying them.
Qur'an	قرآن	:	(Lit. reading). Allah's miraculous speech revealed to Muhammad (saw) in Arabic

and transferred to us by the Tawatur method.

Qudsi	قدسي	:	A Hadith in which its Sanad leads to the Prophet (saw) and the Prophet (saw) is reporting it from Allah (swt).
Rasool	رسول	:	Nabiy is anyone who receives a revelation from Allah (swt). If this revelation is a new Message such as Islam then the Nabiy is given the additional title of Rasool.
RiwAyah	روايــة	:	Pertaining to narration or transmission.
Rukn	ركــن	:	Pillar, essential ingredient.
Sahabi	صحابــي	:	A Muslim who saw the Prophet (saw). A Muslim who lived with the Prophet (saw) for one or two years or participated in one or two Ghazwaat.
Sahih	صحيــح	:	A Hadith reported by an Adl and Dabeth (maintains accuracy of the report) person from another person of similar qualities till the end of the report.
Salah	صلاة	:	(Lit. prayers) an 'Ibadah in Islam done in a defined manner with the intention of doing it.
Sanad	سنــد	:	A chain of reporters leading back to the Prophet (saw).
Sawm	صــوم	:	Fasting.
Shari'ah	شريعــة	:	Composition of all the laws derived from the Islamic legislative sources.

Shirk	شـرك	:	Associating partners with Allah by giving Allah's (swt) attributes to created things or giving Allah the attributes to created things or giving Allah the attributes of created things.
Shura	شـورى	:	Mutual consultation.
Sunnah	سنـــة	:	1. Prophet (saw)'s way of life. Consists of the sayings, actions and silent approval of the Prophet (saw). 2. Sunnah is also used to mean a Nafilah as opposed to Fard, a compulsory order.
Tabaqah	طبقــة	:	A class of reporters in the same generation, i.e. Sahabah (ra), Tabi'een.
Tabi'een	تابعيــن	:	(Sing. Tabi'een lit. follower); those who met and studied under the Sahabah (ra) and died as Muslims.
Tafsir	تفسيــر	:	An explanation of the meanings of the Qur'anic word and verses within a specific methodology.
Taqleed	تقليــد	:	Following of another person's opinion without a binding proof.
Taqriri	تقريــري	:	Approval.
Taqwa	تقــوى	:	The protection of one's self from the punishment of Allah (swt) by doing what He (swt) has commanded and avoiding what He (swt) has forbidden.
Tashree'	تشـريـع	:	Legislation.
Tawheed	توحيـــد	:	The purely unitarian concept of Allah (swt) found only in Islam, in which Allah (swt) is unique in being the Creator, in

being worshipped, and in His essence, names and attributes.

Ulema	علماء	:	(Sing. 'Alim) lit. Scholars but commonly used to refer to scholars in Islam.
Usul al Fiqh	اصول الفقة	:	Collection of rules pertaining to the methodology for extracting rules from the Islamic legislative sources.
Wahy	وحى	:	Revelation.
Wajib	واجب	:	An obligatory action synonymous to Fard. If the individual performs the action then he is rewarded. Whereas, the failure to perform the action results in a punishment.
Zakah	زكاة	:	An act of worship requiring a Muslim to pay a certain portion of his wealth to the Bait-ul-Mal of the Islamic State for distribution towards eight specified categories.